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THE MODERN LAW
OF
GENERAL
BUSINESS CORPORATIONS
IN
MICHIGAN

INCLUDING
COMMENTARIES AND ANNOTATED ACTS
WITH FORMS
THE CONSOLIDATED CORPORATION LAW
THE PARTNERSHIP ASSOCIATIONS, LIMITED, LAW
THE FOREIGN CORPORATION LAW

By
BURRITT HAMILTON
OF THE BATTLE CREEK, MICHIGAN, BAR

SECOND EDITION
ENTIRELY RE-WRITTEN, GREATLY AMPLIFIED
THOROUGHLY REVISED TO DATE

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PREFACE TO SECOND EDITION.

Michigan has been, and is, a peculiarly fertile field for the development of corporation problems. The diversity of her industries; her lumbering, mining, manufacturing; her shipping by land and sea; her wealth employed in adventures; her seasons of almost spectacular industrial promotion; the restless energy of her people—these originative causes have sent to our highest court for solution the main body of practical problems involved in corporation jurisprudence.

The former edition of this work was intended merely as a guide to the construction of the then new Consolidated Corporation Act. That work has been rewritten, rearranged and expanded. In the present edition, an attempt has been made to give practically all the local law on the subject of general private corporations and partnership associations, limited. To this has been added enough new matter from other sources to give the work reasonable completeness. Part I of each division of the present edition announces principles; Part II shows these principles applied; the former represents theory; the latter, practice. The research which made the first possible has made the second valuable. Considerable attention has been devoted to procedure—*what to do and how*. All of the important forms given have been subjected to the test of practical use.

In the citation of Michigan cases, it has been thought best in many instances to cite dictum as well as decisions whenever it was illuminative of the matter in point. It has been deemed sufficient that the dictum of a great court is valuable if not authoritative.

As an advocate who, having consumed his allotted time in closing his case to the jury, recounts with regret the points omitted from his argument, so the writer of these pages—compelled of necessity to surrender his manuscript to the waiting publishers—is keenly conscious of the work's shortcomings. He can but say to a generous profession: "Gentlemen, the verdict rests with you."

BURRITT HAMILTON.

Battle Creek, Michigan, October 4, 1909.

1

PREFACE TO THE FIRST EDITION.

Annotation of the Consolidated Corporation Law of Michigan (Act 232 of 1903, as amended) was suggested by the importance of the act, the questions arising daily in practice under it, and the facility with which it lends itself as a framework about which to arrange the case law of private corporations thus far developed in this state.

The citations herein are chiefly from the Michigan Decisions and the Lawyers' Reports, Annotated—volumes usually found in the working libraries of Michigan lawyers. These authorities have been supplemented by citations from standard text-books.

Special attention is called to the recent decision of the Court of Chancery of New Jersey in the case of Audenried vs. East Coast Milling Co., construing language identical with that of the closing paragraph of Sec. 2 of the Michigan act. The clause interpreted by this case has given rise to widely differing views, hence the judicial determination of its real meaning is of value.

If the arrangement of authorities herein somewhat simplifies the task of lawyers and corporate officers in their work under the act discussed, the purpose of the annotator will have been accomplished.

B. H.

Battle Creek, Michigan, 1906.

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DIVISION I
System of Domestic Corporation
Jurisprudence

PART ONE

COMMENTARIES

- Chapter 1. The Status of Corporation.
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- Chapter IV. Corporate Duties, Liabilities and Disabilities.
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DIVISION I

SYSTEM OF DOMESTIC CORPORATION JURISPRUDENCE

PART ONE—Commentaries

CHAPTER I.

THE STATUS OF CORPORATIONS.

- §1. The Corporation and the State.
- §2. The Fiction of Corporate Unity.
- §3. The Fiction Disregarded.
- §4. The Corporation as a "Person."
- §5. The Partnership Contrasted with the Corporation.

§1. The Corporation and the State.

"A Corporation is but an artificial person"¹. It is a child of the State². Though brought forth with full legal capacities, it remains permanently under parental control³.

The charter of a corporation is the law of its being⁴ and this it may not violate without peril of punishment⁵. The power of life

1. Definition by Chief Justice Christiancy in *Thompson v. Waters*, 25 Mich. 214-233.

In attorney General v. Oakland County Bank, Walk. Chan. (Mich.) 90-97, Chancellor Manning said: "A corporation is an artificial being, created by law with limited powers, and for specified purposes; and there is a tacit condition annexed to its charter, that it shall exercise its franchises in the manner and for the purposes specified therein, and for no other purpose, and in no other manner; and every abuse of its powers is a violation of the law of its being, and a forfeiture of its franchises."

Although sometimes criticised, Chief Justice Marshall's definition

has, perhaps, never been surpassed; "A corporation is an artificial being, invisible, intangible, existing only in contemplation of law."—*Trustees of Dartmouth College v. Woodward*, 4 Wheat, 514-635, 4 L. ed. 659.

2. *Detroit Schutzen Bund v. Agitations Verein*, 44 Mich. 313-315.

3. *Commissioner of Railroads v. Grand Rapids & I. Ry. Co.*, 130 Mich. 248-251.

4. *Attorney General v. Oakland County Bank*, Walk. Chan. (Mich.) 90-97. *People v. Bank of Pontiac*, 12 Mich. 526-536.

5. *People v. Oakland County Savings Bank*, 1 Doug. (Mich.) 282-291. *Coon v. Plymouth Plank*

and death is vested in the creative sovereignty. Yet the State's power over corporations is not without limitations. The corporation is a person within the meaning of the State and the Federal Constitutions. Like other persons, it can not be deprived of vested rights without due process of law⁶, nor can its power be abridged or revoked without its consent, unless the right has been reserved by the State⁷. Even under the cloak of police power, legislative interference with vested corporate rights is prohibited, except when imperatively necessary for the purpose of protecting "the comfort, safety or welfare of society"⁸.

§2. The Fiction of Corporate Unity.

In contemplation of law, the corporation is a legal person⁹ having an existence wholly distinct and separate from that of its members¹⁰. Even where a single individual acquires all of the stock of a corporation, the corporate identity is not affected thereby, but remains separate and unchanged¹¹. Upon the same principle, the fact that the officers and stockholders of two corporations are identical, establishes no legal identity between the

Road Co., 32 Mich. 248-265; *Stewart v. Father Matthew Society*, 41 Mich. 67; C. L. 1897, Sec. 9950.

6. *Smyth v. Ames*, 169 U. S. 466, 42 L. ed. 819-840; *Attorney General v. Looker*, 111 Mich. 498; *City of Detroit v. Plank Road Co.*, 43 Mich. 140; *Railroad Commissioner v. Grand Rapids & I. Ry. Co.*, 130 Mich. 248-250.

7. *Michigan State Bank v. Hastings*, 1 Doug. (Mich.) 224-234.

That such right has been reserved in this state by constitution, see *Beecher's Const.* 1908, Art. XII, Sec. 1.

8. *Lake Shore & M. S. Ry. Co. v. Smith*, 173 U. S. 683, 43 L. ed. 858; *Smith v. Lake Shore & M. S. Ry. Co.*, 114 Mich. 460-482.

9. By statute, "The word 'person' may extend and be applied to bodies politic and corporate, as well as to individuals." C. L. 1897, Sec. 50, Par. 12. It is a general rule that when a constitution or statute refers to "persons" generally, without naming corporations, the term includes corporations, unless otherwise specified. *Minneap-*

olis & St. L. R. Co. v. Beckwith, 129 U. S. 26, 32 L. ed 585-586. *Marshall Corp.* p. 40; *Turnbull v. Prentiss Lumber Co.*, 55 Mich. 387-393.

10. *Randall v. Dudley*, 111 Mich. 437; *Doyle v. Mizner*, 40 Mich. 160-164; *Rust v. Bennett*, 39 Mich. 521-522; *Hanson v. Donkersley*, 37 Mich. 186; *Talbott v. Scripps*, 31 Mich. 268. It is held that a contract for the benefit of a corporation can not be deemed to confer an individual benefit upon any one of its stockholders. Thus, a suretyship contract of a married woman for the benefit of a corporation in which she was a stockholder would not be supportable as a contract for the benefit of her separate estate.—*Russel v. People's Savings Bank*, 39 Mich. 671-674. So a promise by a stockholder to pay a debt of the corporation is a promise to pay the debt of another within the meaning of the statute of frauds.—*Hanson v. Donkersley*, ante.

11. *Randall v. Dudley*, 111 Mich. 437.

corporations¹². A corporation is so distinct from its stockholders that knowledge possessed by a non-official stockholder is not notice to the corporation¹³, nor is a stockholder charged with constructive notice of corporate transactions¹⁴.

The fiction of the corporation's separate identity reaches its utmost limit, perhaps, in that class of cases in which the courts hold that an officer or agent of a corporation may know a thing for one purpose and, at the same time, remain ignorant of it for another purpose. Necessarily, whatever information a corporation gains is nothing more than the information of its human agents. Apparently anything known to a corporate agent would be known to the corporation. But the rule is otherwise. However anomalous it may seem that a single brain may, at one and the same time, know and not know a certain fact, the exigencies of corporate administration amply sustain the rule. Thus, where a corporate officer or agent acts in a dual capacity, wherein he has, or represents, an interest adverse to that of the corporation, his knowledge of matters disadvantageous to the corporation, and which he might naturally be tempted to conceal, will not be held to be the knowledge of the corporation¹⁵. A less strained application of a similar principle is this: that facts coming to the attention of a corporate agent¹⁶, or admissions made by such agent¹⁷, unrelated to his duty, and outside the scope of his employment, are not the knowledge or admissions of the corporation. The stockholders are not the corporation, nor are the directors. When the charter, or by-laws, make the validity of an act dependent upon authorization by the board of directors, the separate concurrence of the directors as indi-

12. *Mason v. Finch*, 28 Mich. 282-284.

13. *International Wrecking & Transportation Co. v. McMorran*, 73 Mich. 467-470.

14. *World Mfg. Co. v. Cycle Co.*, 123 Mich. 620-624. "A corporation is not charged with constructive notice of corporate acts, and may deal with the corporation as a stranger may, where his personal connection with the corporate action is not such as to notify him of reasons to the contrary."—Justice Cooley, in *Rice v. Peninsular Club*, 52 Mich. 87-90.

15. *People's Savings Bank v. Hine*, 131 Mich. 181-183; *State*

Savings Bank v. Montgomery, 126 Mich. 327-333.

16. *Cook's Corp.* Sec. 727. See also *Zeigler's v. Valley Coal Co.*, 150 Mich. 82-85.

17. *Peek v. Detroit Novelty Works*, 29 Mich. 313; *Allington and Curtis Co. v. Reduction Co.*, 133 Mich. 427-435; *Beunk v. Velle City Desk Co.*, 128 Mich. 526-567; *Ward's C. & P. L. Co. v. Elkins*, Mich. 439-442. In the last named case, the statements of a steamboat clerk, not shown to have been made in relation to matters within the scope of his duty, were held inadmissible as evidence.

viduals will be insufficient¹⁸. Where the strict application of this principle would defeat justice, the law of estoppel usually intervenes¹⁹.

§3. The Fiction Disregarded.

When a corporation exists as a mere cloak for the concealment of individual fraud, the courts, in furtherance of justice, will look beyond the corporate shadow to the men within the shadow²⁰. Fraud is none the less fraud when perpetrated through accomplices. Where corporate officers are mere "dummies," used as a blind to hide the fact that those in control are plundering the corporation, deceiving the public, or defrauding stockholders, creditors or the State, equity will brush aside the puppets and charge the wrong doing, and its consequences, upon the true, originaive source of the illegal action²¹. Another point at which the fiction of corporate unity fails is this: each stockholder is so far a part of the corporation itself, that he is bound by judgments against the corporation and can not, in the absence of fraud, attack their validity in collateral proceedings, even though the corporation may have had a good defense which was not interposed²². A further illustration of the failure of the fiction of corporate unity arises in cases where judges, or their relatives within prohibited degrees, are stockholders in a corporation before the court. In such cases the judge is disqualified to the same extent as though the corporation were a

18. *Lockwood v. Thunder Bay River Boom Co.*, 42 Mich. 536-539; *Finley Shoe & Leather Co. v. Kurtz*, 34 Mich. 88-91; *Bond v. Pontiac Oxford & P. A. R. Co.*, 62 Mich. 651; *Johnson v. Farmers Mutual Fire Ins. Co.*, 110 Mich. 488-490; *Warner v. Life Association*, 100 Mich. 157. In *Finley Shoe & Leather Co. v. Kurtz*, ante, Chief Justice Cooley said: "Where joint action is required by law, individual action is of no avail, and it, at most, only puts the individuals under honorary obligations, of which the law can take no notice."

19. *Mich. Cent. R. Co. v. Chicago K. & S. Ry. Co.*, 132 Mich. 324.

20. *Ruttle v. What Cheer Coal*

Mining Co., 153 Mich. 300. In this case Foss furnished the entire capital, exercised sole management, and owned all except two shares of the stock, of a corporation operated in his own interest. In commenting upon this state of fact, Justice Blair said: "In fact, Mr. E. B. Foss was the corporation."

21. *Chicago and Grand Trunk Ry. Co. v. Miller*, 91 Mich. 166-183; *Lucas v. Friant*, 111 Mich. 426-435; *Miner v. Belle Isle Ice Co.*, 93 Mich. 97-110; *Jones v. Green*, 129 Mich. 203-207; *Buckhout & Witwer*, 16 D. L. N. 417 (July, 1909).

22. *Mutual Fire Ins. Co. v. Phoenix Furniture Co.*, 108 Mich. 170; *Powell v. Oregonian R. Co.*, 3 L. R. A. 201.

natural person to whom the judge, or those akin to him, sustained relationship by ties of blood or marriage²³.

§4. The Corporation as a "Person."

The business corporation is born a trustee. It holds its capital stock—its very "life blood"—as a trust fund for its creditors²⁴ and stockholders²⁵. Custodian of the savings of many, it must divide its profits with an impartial hand²⁶. It has no power, save by sanction and grant of the State²⁷. Though a child of sovereignty, it is brought forth but to serve and to obey²⁸. The law of the land is its decalogue, and its high priests are the courts of chancery²⁹.

Within the scope of its charter powers, and so far as is consistent with the character of its being a corporation may do all things that a natural person may do, except as it is restricted by statute³⁰. It is, in fact, competent and not unusual for legislative bodies to confer upon corporations appropriate powers far exceeding those enjoyed by private individuals. Thus, we have railway corporations with power to exercise the right of eminent domain, and banking corporations with sharply restricted power to issue currency. Within the limitations stated, corporations have power to contract³¹; to buy, hold and sell appropriate real

23. *Davis Colliery Co. v. Charlevoix Sugar Co.*, 15 D. L. N. 974-976, (Dec. 1908); *Martin v. Ins. Co.* 139 Mich. 148; C. L. 1897, Sec. 1109; *Peninsular Ry. Co. v. Howard*, 20 Mich. 18-25. In the case last mentioned, Justice Christiancy said: "It is not a matter of discretion with the judge or other persons acting in a judicial capacity, nor is it left to his own sense of propriety or decency; but the principle forbids him to act in such capacity at all when he is thus interested, or when he may possibly be subjected to the temptation. His powers are absolutely subject to this limitation."

24. *International Fair & Exposition Association v. Walker*, 88 Mich. 62-71. In this case Chief Justice Champlin declared, that, "The capital stock authorized is the life blood of the corporation," and this expression was quoted with approval by Justice Grant in

Continental Paint Co. v. Sec'y of State, 128 Mich. 621-626. *American Steel & Wire Co. v. Eddy*, 130 Mich. 266; *Peninsular Savings Bank v. Stove Polish Co.*, 105 Mich. 535; *Clark v. E. C. Clark Machine Co.*, 151 Mich. 416-423.

25. *Upton v. Tribilcock*, 91 U. S. 45, 23 L. ed. 203-205.

26. *Phillips v. Jacobs*, 145 Mich. 108; *Smith v. Smith, Sturgeon & Co.*, 125 Mich. 234.

27. *Dewey v. Central Car & Mfg. Co.*, 42 Mich. 399, 401.

28. *Middleton v. Flat River Booming Co.*, 27 Mich. 533-535.

29. C. L. 1897, Secs. 9755, 9757. et. seq.

30. *Thompson v. Waters*, 25 Mich. 227.

31. *Cicotte v. St. Anne's Church*, 60 Mich. 552; *McCracken v. Halsey Fire Engine Co.*, 57 Mich. 361; *Regents v. Detroit Y. M. S.*, 12 Mich. 138; *Ismon v. Loder*, 135 Mich. 345-350.

estate³² and personal property³³; to acquire property by will, or by gift, and to mortgage, pledge or otherwise dispose of any of the property thus acquired³⁴. Like a natural person, a corporation may prefer one creditor over another in states where, as in Michigan, preferences by way of mortgage or pledge are not prohibited³⁵. A corporation may become the trustee for another, and may hold in trust any property which it might hold in its own right³⁶. It may become an agent as well as a principal, an employee as well as an employer³⁷. Constrained, by the nature of its being, to carry on its business by means of agents, a corporation principal is, in general, upon the same footing as other principals, and may be held, under like circumstances, for the frauds³⁸ and torts³⁹ of its agents. Thus it may become liable for libel, slander⁴⁰ and malicious prosecution⁴¹.

§5. The Partnership Contrasted with the Corporation.

The partnership is the primitive type of association for profit. Its simplicity of formation, its breadth of powers, its freedom from enforced publicity, its immunity from special legislation and State control, afford it favor, even today, with those who prefer temporary convenience to permanent advantages.

A partnership of more than three members is usually unwieldy. It is like an army composed exclusively of generals. Each partner is a principal; each has an equal voice in the management; each is an agent of the firm, and may bind all of his associates by contracts, however improvident. Each partner may mortgage or sell the firm's property, and if he misappropriates the proceeds, the sole remedy of his associates is by way of an accounting in chancery. For the firm's obligations,

32. *Thompson v. Waters*, 25 Mich. 214. 403-408.

33. *Regents v. Detroit Y. M. S.*, 12 Mich. 138-160.

34. *Joy v. Jackson & Mich. P. R. Co.*, 11 Mich. 155-164.

35. *Longley v. Hosiery Co.*, 128 Mich. 194-197; *Kock v. Bostwick*, 113 Mich. 302; *Bank of Montreal v. Salt & Lumber Co.*, 90 Mich. 345-349; *Kendall v. Bishop*, 76 Mich. 634; *Turnbull v. Lumber Co.*, 55 Mich. 396; *Town v. Bank of River Raisin*, 2 Doug. (Mich.) 530.

36. *White v. Rice*, 112 Mich.

37. *McWilliams v. Detroit Central Mills Co.*, 32 Mich. 242-276.

38. *Lasier v. Appleton Land & Iron Co.*, 130 Mich. 588-590.

39. *Wachsmuth v. Merchants National Bank*, 96 Mich. 426; *Bath v. Katon*, 37 Mich. 199.

40. *Randall v. Evening News Association*, 97 Mich. 136-140; *Bacon v. Mich. Cent. R. Co.* 55 Mich. 224-228.

41. *Cascarella v. National Grocer Co.*, 151 Mich. 15-19; *Ironwood Store Co. v. Harrison*, 75 Mich. 197-203.

all of the partners are individually liable to the last farthing of their unexempt, private estates.

Funds invested in a partnership are thoroughly "tied up." An interest in such a concern cannot be transferred effectively without the consent of the other partners, nor can it be, in any proper sense, hypothecated. Death of a partner, or sale of his interest, dissolves the firm. Good will and the established trade name are thus impaired, or wholly lost. When a partner transfers his interest, he remains liable for the firm debts then contracted. He may even become answerable for subsequent debts to persons who have extended credit in ignorance of his withdrawal. At every point, the partnership relation closely approximates the hazard of a game of chance.

The corporation has been evolved from commercial necessity to overcome these hardships. Unrestricted in its membership, a corporation representing the combined financial strength of a thousand stockholders may be administered with as much precision as though its shareholders were few. A corporation is not a mere association; it is an *organization*. It is not an extemporaneous alliance; it is a *constitutional government*. Its charter is its supreme, organic law. Its by-laws are its statutes. Its officers are its public servants. Its stockholders are its citizens. These may die, or may transfer their interest; the membership may wholly change; but the corporation remains identical. In effect, its life is perpetual.

The corporate officers are confined to a line of duty, beyond which they may not step, except at peril. They are something more than agents—they are *trustees*. The capital stock in their hands is a trust fund to be administered for the benefit of the corporation, its stockholders and its creditors. Where partners may ramble at will over the field of hazard, corporate officers must follow the narrow highway of the corporate purpose. They are under surveillance. On the one side are the stockholders; on the other, the corporate creditors; while above them hangs the visitorial power of the State, like a suspended sword.

Except as enlarged by statute, the stockholder's liability is limited to his investment. He may lose this, but nothing more. Thus he may, with comparative safety, participate in many corporate enterprises without being intimately acquainted with the daily transactions of any of them. Nor are his funds so invested unavailable, provided he has selected wisely. Stocks of established standing are, under normal business conditions, recog-

nized as sound collateral and desirable property. Hence, by way of pledge or sale, such stocks may be readily converted into cash.

In brief, the dangerous delegations of power, the awkward non-availability of invested funds, the unlimited individual liability—these, and the many other crudities characteristic of the partnership relation, are remedied in the corporation.

CHAPTER II.

THE CHARTER.

- § 6. Form of Charter.
- § 7. What Constitutes the Charter.
- § 8. The Charter as a Contract.
- § 9. The Reserved Right of Amendment and Repeal.
- §10. Validity of Enabling Act.
- §11. Effect of Unconstitutionality of Enabling Act.
- §12. Construction of Charter.

§6. Form of Charter.

In the State of Michigan, corporations have always come into being either by virtue of special legislative enactment, or pursuant to general laws. By the constitution of 1850, the power of the legislature to pass special acts incorporating private companies was restricted to the vanishing point¹, and by the constitution of 1908, the power was abolished altogether². For more than half a century, all business corporations of this state have been organized under general laws. To dwell upon any other form of organization, would be of academic, rather than of practical interest. It is sufficient to say, that a special charter is merely a statute passed for the purpose of creating a

1. The Constitution of 1850 (Art. XV, Sec. 1) provided that, "Corporations may be formed under the general laws, but shall not be created by special act, except for municipal purposes." The exception of corporations "for municipal purposes" has been held to apply to corporations public in their character, or designed solely for the purposes of education and improvement. Thus, agricultural societies, plank road and canal companies were within the exception. *Canal Street Gravel Road Co. v. Paas*, 95 Mich. 372-380; *Agricultural Society v. Houseman*, 81 Mich. 609-614.

2. The Constitution of 1908 provides that, "Corporations may

be formed under general laws, but shall not be created, nor shall any rights, privileges or franchises be conferred upon them, by special act of the legislature."—Const. Art. XII, Sec. 1. Since the constitutional prohibitions upon special charters, it has been beyond the power of the legislature, even by a general act, to confer upon one corporation rights which, under precisely similar circumstances, it denies to another corporation, or to vest in one corporation greater rights and privileges than are conferred upon another corporation of the same class.—*Stimpson v. Muskegon Booming Co.*, 100 Mich. 347-351.

single corporation and endowing it with powers and franchises thus directly conferred. Acceptance of the charter by compliance with its terms closes the charter contract between the corporation and the State, and both parties are thenceforth bound by the terms of the special statute, as firmly as though they had joined in signing an express, written agreement³.

Objection to special charters arose through the fact that, in their procurement, undue influence and the means of corruption became active in obtaining special concessions. The principle of equality among corporate persons of like class was violated. Advantages accorded to one, and denied to another, led public opinion to impugn the motives of the legislative body. The granting of special charters contravened public policy and the practice was abolished under the ban of public disapproval⁴. Charters granted under general laws afford to all organizations of like class an equal opportunity. Such charters are as binding upon the State and the corporation, as though special.

§7. What Constitutes the Charter.

Where, as in Michigan, corporations are formed under general laws, the general law, and the articles of association executed pursuant to it, together constitute the charter⁵. The general corporation laws of the State⁶, so far as they are consistent with the provisions of the enabling act under which a corpora-

3. *People v. Michigan Central R. Co.*, 145 Mich. 140-147; *Attorney General v. Erie & K. R. Co.*, 55 Mich. 15-27.

4. *Wellman v. Chicago & G. T. Ry. Co.*, 83 Mich. 592; *Nelson v. McArthur*, 38 Mich. 204; *Isle Royale Land Corporation v. Secretary of State*, 76 Mich. 162.

5. Any general statute enabling the formation of corporations is variously designed as an "enabling act" or an "organic act." "The general law under which corporations are formed, together with the articles of association adopted in pursuance thereof, sometimes called 'constating' instruments, constitute the charter of the corporation." Justice Champlin, in *Mason v. Perkins*, 73 Mich. 303-319. See also *Dewey v. Central*

Car Mfg. Co., 42 Mich. 399-401; *Van Etten v. Eaton*, 19 Mich. 187-194. In the case last mentioned, Justice Campbell said: "The organic act under which the corporation was formed, together with the articles of association, are to be considered as the charter of the company, and they are in the nature of a grant from the State to the corporators, expressing the rights and privileges conferred and the conditions annexed to them; and the deliberate acceptance of this grant, with the rights and privileges involved in it, is conclusive evidence..... of knowledge in the grantees, or corporators, of all those conditions."

6. See Chapter 230, C. L. 1897. Sec. 8527, *et seq.*

tion has been formed, are, as to such corporations, given the same force and effect as though they were expressly embodied in the enabling act itself. By construction, and in effect, such general laws, so far as they are harmonious with the purposes and the spirit of the enabling act, form a part and parcel of the charter⁷.

§8. The Charter as a Contract.

The charter of a private corporation is a contract between the corporation and the State. Corporate charters fall within the protection of the Federal Constitution, and the constitution of this State, prohibiting legislation impairing the obligation of contracts⁸. When a charter has become operative, both the State and the corporation are bound by its terms, and it is subject to the same rules of construction, and the same estoppels through conduct, silence and acquiescence, that are applicable to contracts between natural persons⁹. The charter contract is supported by a valid consideration consisting in general, of acts and forbearances. Gratuitous collateral legislation, enacted for the encouragement of a corporation, but forming no part of the charter, occupies the same status as any other gratuity, and may be repealed at pleasure¹⁰. So too, a reasonable exercise of the police power of the State is not a violation of the charter contract¹¹.

§9. The Reserved Right of Amendment and Repeal.

The Dartmouth College case established a difficulty and suggested a remedy. The difficulty was, that corporate charters

7. *Great Hive L. O. T. M. v. Supreme Hive*, 129 Mich. 324-334. *Moinet v. Burnham, Stoepel & Co.*, 143 Mich. 489-491; *People v. Gravel Road Co.*, 105 Mich. 16; *Goodrich v. Hackley-Phelps-Bonnell, Co.*, 141 Mich. 343; *Detroit Chamber of Commerce v. Secretary of State*, 109 Mich. 691.

8. U. S. Const., Art. I, Sec. 10; Mich. Const. (1908) Art. II, Sec. 9; Mich. Const. (1850) Art IV, Sec. 43; *Trustees of Dartmouth College v. Woodward*, 4 Wheat. 514; 4 L. ed. 629; *People v. Michigan Central R. Co.*, 145 Mich. 140-147-161; *Pingree v. Michigan Central R. Co.* 118 Mich. 314-339; Mich. State

Bank v. Hastings, 1 Doug. (Mich.) 224-234.

9. *People v. Michigan Central R. Co.*, 145 Mich. 140-170; *State of Michigan v. Flint & P. M. R. Co.*, 89 Mich. 481; *Flint etc. P. R. Co. v. Woodhull* 25 Mich. 99-101; *Township of Erin v. Plank Road Co.*, 115 Mich. 465-468.

10. *Manistee & Northeastern R. Co. v. Commissioner of Railroads*, 118 Mich. 349; *East Saginaw Mfg. Co. v. Saginaw*, 19 Mich. 259.

11. *Smith v. Lake Shore & M. S. R. Co.*, 114 Mich. 460-482; *Lake Shore & M. S. Co. v. Smith*, 173 U. S. 684, 43 L. ed. 858-865.

were held to be inviolable contracts. The remedy, pointed out by Justice Story in his concurring opinion was, that the State might legally reserve to itself the right of amendment and repeal¹². This suggestion was embodied in the Michigan Constitution of 1850, and, again, in the constitution of 1908¹³. In both constitutions the right of amendment and repeal is reserved in broadest terms. This reservation is to be construed as though expressly written in the articles of association of each Michigan corporation formed since 1850¹⁴. Reasonable exercise of the right of amendment or of repeal, even to the extent of depriving the corporation of its existence, does not impair the obligation of a contract, nor does it amount to taking away property without due process of law. It is simply the exercise of a contractual right, reserved to the State under the provisions of the organic law, and as such it is upheld¹⁵.

The courts will not inquire into the motives which lead the legislature to repeal a charter¹⁶. It is conclusively presumed that

12. *Greenwood v. Union Freight R. R. Co.*, 105 U. S. 21, 26 L. ed. 961-965; *Looker v. Maynard*, 179 U. S. 46, 45 L. ed. 79-82.

13. The provision of the Constitution of 1850 (Art. XV, Sec. 1) was as follows: "All laws passed pursuant to this section may be amended, altered or repealed." The provision of the Constitution of 1908 (Art. XII, Sec. 1) is as follows: "All laws heretofore or hereafter passed by the legislature for the formation of, conferring rights, privileges, or franchises upon corporations, and all rights, privileges, or franchises conferred by such laws, may be amended, altered, repealed or abrogated."

14. *Attorney General v. Looker*, 111 Mich. 498-505. In this case Justice Moore, quoting from *Parker v. Railroad Co.*, 109 Mass. 500, said: "Many cases have arisen in this court involving the construction and application of the power to amend or alter charters. The reservation of power is broad and comprehensive. Whatever may be its limitation, it at least reserves to the legislature the right to make any reasonable amendments, regulating the mode in which the

franchise granted shall be used and enjoyed, which would not defeat or essentially impair the object of the grant, or take away any property or rights which have become vested under a legitimate exercise of the powers granted."

15. *People v. Calder*, 153 Mich. 724-730. Thus the fact that a corporation has bonds outstanding, the value of which will be diminished by the repeal of its charter, in no way interferes with the right of repeal. This is a risk assumed by the purchaser. The bonds are issued and received subject to the State's reserved power.—*Id.* See also *Greenwood v. Union Freight R. R. Co.*, 105 U. S. 21, 26 L. ed. 961.

16. *People v. Calder*, 153 Mich. 724-730; *People v. Gardner*, 143 Mich. 104-108.

The courts decline to review the legislature's discretion. No matter how apparently impractical or unwise an act may be—no matter how clear the evidence that it has emanated from motives of personal greed or political bias—the courts are bound by it, and it is the law, unless violative of some constitutional principle. *Flint etc.*

the legislature has acted in good faith¹⁶. The State is under no obligation to give a corporation notice of a proposed amendment or repeal, when the bill for that purpose originates with the legislature¹⁷. When, however, such bill originates outside the legislature, notice should be given¹⁸. While, under its reserved power, the State may change a corporation's contractual capacity¹⁹, or even go so far as to end the corporate life, the power reserved can not be construed as conferring upon the legislature authority to violate the fundamental principles of constitutional government²⁰. The legislature can not, by amendment, essentially change or divert the object of the grant²¹, nor can it by repeal deprive the corporation of vested property rights²². Any legislative attempt to pervert the reserved power

P. R. Co. v. Woodhull, 25 Mich. 99-102; People v. Mahaney, 13 Mich. 484-500.

17. People v. Calder, 153 Mich. 724; People v. Hurlbut, 24 Mich. 44-54.

18. C. L. 1897, Sec. 8569.

19. Bissel v. Heath, 98 Mich. 478-479.—In this case it was held that under the reserved right of amendment, the legislature may increase the liability of stockholders as to future contracts.

20. In *Detroit v. Detroit & Howell P. R. Co.*, 43 Mich. 140-147, Justice Cooley said: "But for the provision in the constitution of the United States which forbids impairing the obligation of contracts, the power to amend and repeal corporate charters would be ample without being expressly reserved. The reservation of the right leaves the State where any sovereignty would be if unrestrained by express constitutional limitations, and with the powers which it would then possess. It might therefore do what it would be admissible for any constitutional government to do when not thus restrained, but it could not do what would be inconsistent with constitutional principles, and it can not be necessary at this day to enter upon a discussion in denial of the right of the government to take from either individuals or

corporations any property which they may have rightfully acquired. In the most arbitrary times such an act was recognized as pure tyranny, and it has been forbidden in England ever since Magna Charta, and in this country *always*.

21. Attorney General v. Looker, 111 Mich. 498-505.

22. *Railroad Commissioner v. Grand Rapids & I. Ry. Co.*, 130 Mich. 248-250; *Smith v. Lake Shore & M. S. Ry. Co.*, 114 Mich. 460; Attorney General v. Looker, 111 Mich. 498; *East Saginaw Mfg. Co. v. Saginaw*, 19 Mich. 258-295; *Detroit v. Detroit & Howell P. R. Co.*, 43 Mich. 140-148. In the case last cited, mandamus was prayed to compel a corporation to remove a toll gate and vacate a portion of its road without compensation. The basis of the suit was that the company's right to occupy something more than two miles of road had been withdrawn by the State through amendment of the company's charter. In denying the State's right to make such an amendment, Justice Cooley said: "A statute which would have this effect would not be a statute to amend franchises, but a statute to confiscate property; it would not be a statute of regulation, but of spoliation." While vested rights in property can not be appropriated by the State, nor impaired, un-

of amendment or repeal to these ends would be unconstitutional and void²³.

§10. Validity of Enabling Act.

The legislature is the sole judge of the propriety of an enabling act²⁴, but the question of the act's validity is for the courts. An enabling act may be void because never lawfully adopted, or on account of some conflict between it and the Constitution of the State, or of the United States. Where an act conferring rights and franchises upon a corporation is attacked on the ground that it was improperly adopted by the legislature, all presumptions are with the legality of the act. If the legislature has, by subsequent amendment, or in any other manner, recognized the act as valid, and impliedly invited others to do so, the act will be sustained²⁵.

Objection to the constitutionality of an act is most frequently founded upon the constitutional provision that, "No law shall embrace more than one object, which shall be expressed in its title"²⁶. The fault may be that the act embraces more than one subject, or that the subject of the act is not properly expressed in its title, or that both of these defects exist concurrently²⁷.

der cover of an act, purporting to amend or repeal a charter, the power to take such property for public purposes, upon making due compensation to the owner may always be exercised under the State's power of eminent domain. *Pingree v. Michigan Central R. R. Co.*, 118 Mich. 314-339.

23. *Smith v. Lake Shore & M. S. R. Co.*, 114 Mich. 460-473.

24. *Flint etc. P. R. Co. v. Woodhull*, 25 Mich. 99-102; *People v. Mahaney*, 13 Mich. 484-500.

25. *Attorney General v. Joy*, 55 Mich. 94-106.

26. Const. 1850, Art. IV. Sec. 20; Const. 1908, Art. V, Sec. 21.

27. *Grimm v. Secretary of State*, 137 Mich. 134; *Graham v. Muskegon County Clerk*, 116 Mich. 571; *Canal Street Gravel Road Co. v. Paas*, 95 Mich. 372-379. In commenting upon the constitutional provision that "No law shall embrace more than one object, which shall be expressed in its title",

Justice Cooley said: "The history and purpose of this constitutional provision are too well understood to require any elucidation at our hands. The practice of bringing together into one bill subjects diverse in their nature, and having no necessary connection, with a view to combining in their favor the advocates of all, and thus secure the passage of several measures, no one of which could succeed upon its own merits, was one both corruptive of the legislator and dangerous to the State. It was scarcely more so, however, than another practice, also intended to be remedied by this provision, by which, through dexterous management, clauses were inserted in bills, of which the titles gave no intimation, and their passage secured through legislative bodies whose members were not generally aware of their intention and effect. There was no design, by this clause, to embarrass legis-

The fact that rights have become vested through mistaken reliance upon an unconstitutional enabling act, lends the act no validity. The State waives nothing by failure to promptly intervene. But where imported rights would be overthrown, the unconstitutionality of the act must be clear and compelling before the courts will adjudge the legislation unconstitutional²⁸.

§11. Effect of Unconstitutionality of Enabling Act.

There can be no corporation, either *de jure* or *de facto*, except by virtue of a valid law²⁹. Where incorporation is attempted under void legislation, but for a *lawful* purpose, the members incur the liability of partners³⁰. But where the attempted incorporation under a void law is for an *unlawful* purpose, partnership liability does not arise³¹. To hold otherwise would be to assert, that a partnership might be formed for an illegal purpose. Where a purported corporation turns out to be non-existent for want of valid enabling legislation, contracts of all kinds made by or with the supposed corporation are absolutely

lation, or to make laws unnecessarily restrictive in their scope and operation, and thus multiply their number; but the framers of the constitution meant to put an end to legislation of the vicious character referred to, which was little less than a fraud upon the public, and to require that in every case the proposed measure should stand upon its own merits, and that the legislature should be fairly notified of its design when required to pass upon it..... This purpose is fully accomplished when the law has but one general object, which is fairly indicated by its title."—*People v. Mahaney*, 13 Mich. 481-494; see also *People v. State Ins. Co.*, 19 Mich. 392-398.

28. *Attorney General v. Joy*, 55 Mich. 94. In sustaining the constitutionality of the "Train Railway Act" Justice Grant said: "Street railways have existed under this act for nearly thirty years. Millions of money have been invested in them. They have been extensively used by the people.... In the many cases brought to this court involving the various

provisions of the act, its constitutionality was never raised, and is now for the first time doubted. If its constitutionality were doubtful, courts might well be justified in upholding the practical construction which has thus been adopted by the people."—*Detroit City Ry. v. Mills*, 85 Mich. 634-646.

29. Justice Champlin, in *Mason v. Perkins*, 73 Mich. 303-312, states this proposition as follows: "No corporation in this State can exist unless it be created by law, and every corporation, when called upon by the people to show by what authority it exercises the franchises and privileges of a corporation, must show a valid enactment of the legislature for its authority." See also *Eaton v. Walker*, 76 Mich. 579-590; *Burton v. Schildbach*, 45 Mich. 504-508; *Green v. Graves*, 1 Doug. (Mich.) 351.

30. *Eaton v. Walker*, 75 Mich. 579-590; *Burton v. Schildbach*, 45 Mich. 504-511.

31. *State v. How*, 1 Mich. 512-513; *Burton v. Schildbach*, 45 Mich. 504-511.

void. There is no corporate party to be contracted with, and where there is no corporation there can be no incorporators. No matter how formal, or how supported by valuable considerations—no matter how fortified by fairness and good faith—such contracts are nullities because, there being no corporation, there is, upon one side of the apparent agreement, no contracting party³². Under such circumstances, equity will do justice, as far as may be, between the parties, by way of an accounting³³, but equity can not inject vitality into void instruments; it can go no further than to merely determine the equitable rights and interests of the parties by decree³⁴.

A corporation will not be permitted to deny the validity of its own being³⁵. Where a corporation has a *de jure* or a *de facto* existence, the State, and no one other than the State, can attack the legality of its organization³⁶. Stockholders, creditors and third parties who have recognized the purported corporation by dealings with it, are estopped to deny that it is lawfully organized³⁷. But where, because of the unconstitutionality of the

32. *Scheutzen Bund v. Agitations Verein*, 44 Mich. 313; *Burton v. Schildbach*, 45 Mich. 504-510.

33. *Burton v. Schildbach*, 45 Mich. 504-511.

34. *Hurlbut v. Britian*, 2 Doug. (Mich.) 191; *Burton v. Schildbach*, 45 Mich. 504-513.

35. *Shadford v. Detroit etc. Ry.*, 130 Mich. 300-304; *Monroe Water Co. v. Frenchtown*, 98 Mich. 431-436.

36. *Shadford v. Detroit, etc., Ry.*, 130 Mich. 300-305; *Detroit etc. R. Co. v. Campbell*, 140 Mich. 384-394; *Carson City Savings Bank v. Elevator Co.*, 90 Mich. 550-554; *Swartwout v. Michigan Air Line R. Co.*, 24 Mich. 389-395; *Wilcox v. Toledo & A. A. R. R.*, 43 Mich. 584-590; *Meurer v. Detroit etc. Ass'n*, 95 Mich. 451-455; *Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282-288; *Chicago & Grand Trunk Ry. Co. v. Miller*, 91 Mich. 166-182; *Jhons v. People*, 25 Mich. 498-501; *Toledo & A. A. R. Co. v. Johnson*, 55 Mich. 456-460; *Grand Rapids Bridge Co. v. Prange*, 35 Mich. 399-402.

37. *Shadford v. Detroit, etc. Ry.*,

130 Mich. 300-305; *Love v. Ramsey*, 39 Mich. 47-50; *Carson City Savings Bank v. Elevator Co.*, 90 Mich. 550-554; *Eureka Iron & Steel Works v. Bresnahan*, 60 Mich. 332-337; *Swartwout v. Mich Air Line R. Co.*, 24 Mich. 389-395; *Calkins v. Bump*, 120 Mich. 335-342; *International Fair etc. Ass'n v. Walker*, 88 Mich. 62-82; *Estey Mfg. Co. v. Runnels*, 55 Mich. 130-133; *Merchants & Manufacturers Bank v. Stone*, 38 Mich. 779-782; *Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282-288; *Gow v. Collin & Parker Lumber Co.*, 109 Mich. 45-51; *American Mirror & Glass Beveling Co. v. Bulkley*, 107 Mich. 477-450; *Stofflet v. Strome*, 101 Mich. 197-199; *Chicago & Grand Trunk Ry. Co. v. Miller*, 91 Mich. 166-182; *Monroe v. Ft. Wayne, J. & S. R. Co.*, 28 Mich. 271-275; *Jhons v. People*, 25 Mich. 498-501; *Cahill v. Kalamazoo Mut. Ins. Co.*, 2 Doug. (Mich.) 123-133. Estoppels rest upon equity. Where there is no equity to be protected, no estoppel arises. Thus, where a merely colorable organization was formed for the premeditated purpose of

enabling act, there neither is, nor could be, a corporation, either *de jure* or *de facto*, the validity of the existence of the corporation may be attacked by any one, except the purported corporation and such other persons as are estopped by force of irresistible equities³⁸.

§12. Construction of Charter.

The purpose of construction is to arrive at the true intent of the lawmaker, and is not merely to ascertain the abstract meaning of the words employed. In construing a charter, the following rules, so far as they are applicable, control:

(a) Words are to be given their usual and ordinary meaning³⁹.

(b) When the words used are inexplicit, the legislative intent may be gathered from the general scope and purpose of the act, the objects sought to be accomplished, and the settled policy, if any, of the State⁴⁰.

(c) Every provision of an act must be presumed to have a purpose, and every word a meaning, and, if possible, the construction should be such as to make each provision operative and each word effective⁴¹.

perpetrating a fraud, it was held that those who dealt with the organization, even though it had a *de facto* existence, were not estopped from denying the validity of its organization.

38. *Eaton v. Walker*, 76 Mich. 579-590; *Green v. Graves*, 1 Doug. (Mich.) 351-372; *Hurlbut v. Britain*, 2 Doug. (Mich.) 191-195; *Burton v. Schildbach*, 45 Mich. 504-510; *Mok v. Detroit etc. Ass'n*, 30 Mich. 511. See also *State v. How*, 1 Mich. 512; *Wheeler v. Clinton Canal Bank*, Har. Chan. 449. See also *Doyle v. Mizner*, 42 Mich. 332-337. In the case last cited, Chief Justice Campbell states the doctrine as follows: "There are certainly many cases in which a recognition of corporate existence by dealing with the corporation will estop from questioning it. But this doctrine rests on the ground that such action creates relations and encourages conduct which there

may be difficulty in undoing. In ordinary cases such recognitions have been considered as binding, but this rule is one originating in equitable principles, and can not be applied universally. There would be no sense in applying it where no new rights have intervened, and where such recognition has itself been brought about by fraudulent dealings carried on for the very purpose of entrapping a party into the action upon which such recognition is rested. If there was no corporation in fact, and if there are no facts which make it legally unjust to forbid its denial, it is difficult to understand what room there is for an estoppel."

39. *Green v. Graves*, 1 Doug. (Mich.) 351-354.

40. *People v. Michigan Central R. Co.*, 145 Mich. 140.

41. *Attorney General v. Detroit & E. P. R. Co.*, 2 Mich. 138.

(d) Where the legislative intent is in doubt, a construction repugnant to, or inconsistent with, the language of the act, cannot be adopted for the purpose of giving effect to the supposed legislative intent⁴².

(e) When the legislative intent clearly appears from the language of the act itself, the intent must prevail regardless of other rules of construction⁴³.

(f) Whatever is excluded from the grant by exception or reservation, remains in the grantor⁴⁴.

(g) The express terms of the grant will not be enlarged by construction to include purposes not reasonably within the meaning of the grant⁴⁵.

(h) Where the court is in doubt as to the construction of a charter, the doubt will be resolved in favor of the State⁴⁶.

(i) Where a charter has been enjoyed without question for a long period of time, the practical construction placed upon it by the State and the people will be adopted by the courts, unless clearly violative of some constitutional provision⁴⁷.

42. *Green v. Graves*, 1 Doug. (Mich.) 354; *People v. Crucible Steel Co.*, 150 Mich. 563-567; *Waters-Pierce Oil Co. v. Texas*, 177 U. S. 28, 44 L. ed. 657.

43. *Mich. Cent. R. Co. v. State*, 148 Mich. 151-156.

44. *Negaunee Iron Co. v. Iron Cliff Co.*, 134 Mich. 264-280.

45. *Stewart v. Father Matthew Society*, 41 Mich. 67.

46. *Detroit v. Detroit & Howell P. R. Co.*, 43 Mich. 140. The construction most favorable to the State will always be adopted when it appears that the corporation is endeavoring to exceed its charter powers or to evade its chartered duties or liabilities. In the lan-

guage of Chief Justice Marston: "Corporations like individuals, should observe in good faith the letter and spirit of their agreement, and of the accepted terms and conditions imposed upon them, and they should not be permitted, while exercising the right conferred, to make a careful study and effort to evade the responsibilities and restrictions imposed upon them; and if any doubt exists as to the right claimed by the corporation, that doubt should be solved in favor of the public."—*Detroit v. Detroit Mutual Gas Light Co.*, 43 Mich. 594-607.

47. *Detroit City R. Co. v. Mills*, 85 Mich. 634-646; *Frey v. Michie*, 68 Mich. 323-327.

CHAPTER III.

POWERS AND FRANCHISES.

- §13. Scope of Corporate Powers.
- §14. Power to Contract.
- §15. Power to Acquire, Hold and Transfer Property.
- §16. Power to Sue and to be Sued.
- §17. Power to Have Perpetual Succession.
- §18. Power to Have a Corporate Seal.
- §19. Power to Make By-Laws.
- §20. Power to Act as a Trustee.
- §21. Power to Incur Partnership Liability.
- §22. De Facto Powers.
- §23. Corporate Franchises.

§13. Scope of Corporate Powers.

Every corporation has such powers as are expressly conferred by its charter, together with such auxiliary powers as are reasonably necessary to make the express powers effective¹. Where a corporation is organized to carry on a certain business, all of the incidents and departments of that business are included. Thus a corporation having general authority to make wire, has authority to make all kinds of wire, including barbed wire². But a corporation organized for one general purpose has no power to enter upon a different general purpose, in the absence of express legislative authority. For example, a corporation organized to construct and operate a railroad cannot engage in banking, unless authorized³.

1. *Thompson v. Waters*, 25 Mich. 214-227. In this case Chief Justice Christiancy said: "The act of incorporation, in effect, gives to the corporation substantially the powers and franchises of a natural person, except as they are in some way restricted by the act of incorporation, or some other law of the State creating it." *Eureka Iron & Steel Works v. Bresnahan*, 60 Mich. 332-338. In this case it was said: "Corporations may transact all such matters as, being auxiliary to their primary

business are transacted by ordinary individuals, under similar circumstances." See also *Attorney General v. Oakland County Savings Bank*, Walk. Chan. (Mich.) p. 90; *People v. Oakland County Svgs. Bank*, 1 Doug. (Mich.) 282; *Orr v. Lacey*, 2 Doug. (Mich.) 230; *People v. River Raisin & L. E. R. Co.*, 12 Mich. 389.

2. *Harrison Wire Co., v. Moore*, 55 Mich. 610.

3. *People v. River Raisin & L. E. R. Co.*, 12 Mich. 389.

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Regardless of charter provisions, a corporation has power to perform all duties imposed upon it by law, and this whether such duties are express or implied⁴. As creatures of the law, corporations must abide by the law of the State creating them. A corporation organized in this State cannot, without legislative authority, subject itself to paramount control by a corporation of another State⁵.

§14. Power to Contract.

The indispensable and most important active power of a corporation is its power to contract. Within the scope of the corporate purposes, this power exists in all corporations as fully as in natural persons⁶. The contracts of corporations are governed by the same general rules of law that apply to contracts of private individuals⁷. It is, however, competent for the legislature to prescribe the form in which future corporate contracts shall be made⁸.

§15. Power to Acquire, Hold and Transfer Property.

The power to hold property, real and personal, is frequently, perhaps usually, conferred in express terms by the general law⁹. When this power is not expressly granted, it exists nevertheless by implication, to such extent as may be reasonably necessary to enable the corporation to enjoy its franchises and attain its objects. Beyond this it can not go¹⁰.

The power to acquire, hold and deal with property is further limited by statutory restrictions and considerations of public

4. *Knight v. Mich. Female Seminary*, 152 Mich. 616-618.

5. *Lamphere v. United Workmen*, 47 Mich. 429. In this case it appeared that Lamphere was a member of a subordinate lodge, under control of a grand lodge incorporated in Michigan. He was suspended by the grand lodge for non-compliance with an order of the supreme lodge, a Kentucky corporation. Held, that the suspension was illegal for want of authority. The Michigan corporation had no power to subject itself, or its members, to the authority of a foreign corporation unless

authorized by law to do so.

6. *Cicotte v. St. Anne's Church*, 60 Mich. 552; *Eureka Iron & Steel Co. v. Bresnahan*, 60 Mich. 332-338; *McCracken v. Halsey Fire Engine Co.*, 57 Mich. 361.

7. *Eureka Iron & Steel Co., v. Bresnahan*, 60 Mich. 332-338.

8. *McGannon v. Fire Ins. Co.*, 127 Mich. 636-643. See also *Stimpson v. Muskegon Booming Co.*, 100 Mich. 347-350; *Wellman v. Railway Co.*, 83 Mich. 592.

9. C. L. 1897, Sec. 8533; Act 232 of 1903, Sec. 14.

10. *Chapman v. Colby*, 47 Mich. 46-51; *Bank of Michigan v. Niles*, 1 Doug. (Mich.) 401-405-410.

policy. Under our Constitution, real estate not occupied by the corporation in the exercise of its franchises, may not be held for a period longer than ten years¹¹. Bulk sales of corporate property should be made in accordance with the Michigan "bulk sales" law¹². Public policy forbids that a corporation shall purchase its own shares to the impairment of its capital stock¹³. In general, a corporation has no power to acquire stock in another corporation¹⁴, although there are both practical and

11. Const. 1850, Art. 15, Sec. 12; Beecher's Const. 1908, Art. XII, Sec. 5: "No corporation shall hold any real estate for a longer period than ten years, except such real estate as shall be actually occupied by such corporation in the exercise of its franchises." The right to object to violations of this provision is vested in the State alone. *Pere Marquette R. Co. v. Graham*, 136 Mich. 444-450.

12. The Bulk Sales Law (Act 223 of 1905, p. 332) is applicable to bulk sales of corporate property, and can not be defeated by acquiescence of stockholders. *Piereson & Huff Co. v. Noret*, 154 Mich. 267. As to constitutionality of Bulk Sales Law, see *Musselman Grocer Co. v. Kidd, Dater & Price Co.*, 151 Mich. 478; *Spurr v. Travis*, 145 Mich. 721. Where a sale is void for want of compliance with the Bulk Sales Law, the creditors of the vendor may proceed by garnishment against vendee. *C. L. 1897, Sec. 10632; Musselman Grocery Co. v. Kidd, etc., Co.*, 151 Mich. 478.

13. The use of corporate assets for the purchase of the company's own stock is illegal, if its effect is to impair the company's capital; and this objection may be urged by creditors whose claims arose either before or after such impairment. *Clark v. E. C. Clark Machine Co.*, 151 Mich. 416-424. Thus an agreement made by a corporation, when solvent, to buy back shares then sold is unenforceable after the corporation has become insolvent, because such purchase would further impair the capital

stock. *McIntyre v. E. Bement's Sons*, 146 Mich. 74-79. *American Steel & Wire Co. v. Eddy*, 130 Mich. 266. "In the absence of a charter prohibition forbidding it, there is no reason why the stock (of the corporation itself) should not be purchased, at least with the profits derived from the business of the corporation, where all the stockholders assent thereto. *Cook's Corp. Sec. 311*, citing and quoting *Lowe v. Pioneer Threshing Co.*, 70 Fed. Rep. 646; See also *Marshall's Corp.* p. 254.

14. "It may be stated as a general rule that a corporation has no implied power to purchase shares of the capital stock of another corporation." *Cook's Corp. Sec. 314; Marshall's Corp.* p. 248. This question has not been directly decided, although it has been raised, in this State. See *O'Brien v. Dunn Iron Mining Co.*, 141 Mich. 616-621. In *Dewey v. Toledo A. A. & N. Ry. Co.*, 91 Mich. 351-361, it was held that the doctrine of *ultra vires* can not be interposed to defeat the note of one corporation given in payment for the stock of another corporation. It is to be observed that, in this case, the vendee company had statutory power to consolidate with the vendor. See also *Woodcock v. First National Bank*, 113 Mich. 236. By the weight of authority such an agreement would be valid if it could be carried out without impairment of the capital stock, and provided that no statutory prohibition existed. *Wisconsin Lumber Co. v. Telephone Co.*, 127 Ia. 350; 69 L. R. A. 968.

legal exceptions to this rule¹⁵. One well established and sweeping exception to the proposition that a corporation can not acquire its own stock or the stock of another corporation, is this: a corporation, acting in good faith, may purchase *any class of property* not prohibited to it by statute, when such purchase becomes necessary for the purpose of avoiding impending loss¹⁶. But when inappropriate property is thus acquired, it should not be unreasonably retained. It seems that the State alone can object¹⁷.

In the absence of statutory restrictions, a corporation may pledge, mortgage, or otherwise transfer its property, like a natural person. Under the laws of Michigan, an individual may prefer one creditor over another, and corporations, in this respect, enjoy the same rights as private individuals¹⁸. This rule

15. Where, by unanimous consent of all stockholders, all of the assets of one corporation are exchanged for the stock of another corporation, for the purpose of enabling the convenient dissolution and distribution of the assets of the corporation acquiring the stock, the objection that the transaction was *ultra vires* can not be raised by a participating stockholder. *Boynton v. Roe*, 114 Mich. 401. But the objection of a single stockholder to such an exchange would be fatal. *Emery v. Construction Co.*, 132 Mich. 560-572.

And if the stock were acquired, not for the purposes of dissolution, but to enable the transferee corporation to continue its business through the instrumentality of the other corporation, through control of its stock, the transaction would not, in general, be sustained.—*Marshall's Corp.* p. 254. So the purchase of stock by a corporation for the purpose of gaining a monopoly would be both *ultra vires* and an infraction of public policy. In *Richardson v. Buhl*, 77 Mich. 632-658, Chief Justice Sherwood said: "Monopoly in trade or in any kind of business in this country is odious to our form of government. It is sometimes permitted to aid the government in carrying on a great public enterprise, or public

work under government control, in the interest of the public. Its tendency is, however, destructive of free institutions, and repugnant to the instincts of a free people, and contrary to the whole scope and spirit of the Federal Constitution, and is not allowed to exist under express provision in several of our state constitutions." In this case the question of public policy was raised by the court. *Marshall's Corp.* p. 254; *Erpelding v. McKearnan*, 143 Mich. 409.

16. *Thompson v. Waters*, 25 Mich. 214; *Marshall's Corp.* pp. 184-252-258.

17. *Pere Marquette Railroad Co. v. Graham*, 136 Mich. 444-450. It is well settled that the State alone can raise the objection that real estate not used by the corporation is held beyond the constitutional period of ten years.—*Id.* *Thomp. Corp. Sec.* 5795.

18. *Longley v. Hosier Co.*, 128 Mich. 194-197; *Bank of Montreal v. Salt & Lumber Co.*, 90 Mich. 345-349; *Kock v. Bostwick*, 113 Mich. 302; *Turnbull v. Lumber Co.*, 55 Mich. 396; *Kendall v. Bishop*, 76 Mich. 634; *Town v. Bank of River Raisin*, 2 Doug. (Mich.) 530.

The foregoing authority establishes that this preference may be exercised, even after the corporation has become insolvent. Such

is carried to the length of permitting the directors to secure themselves, for *bona fide* indebtedness of the corporation, by way of mortgages upon the corporate property¹⁹. The right of corporations to transfer their special franchises by mortgage or by sale is well established in Michigan²⁰.

§16. Power to Sue and to be Sued.

The power to sue, and the so-called "power to be sued" are ancient common law powers of all corporations. In this State, the power is made express by a general statute²¹. Suits by or against the corporation must be brought in the corporate name, and can not, in general, be in the name of a private individual, even though he may own all of the stock of the corporation²². Where a corporation is known by several different names, it may be sued in either or any of them²³ and a plea of general

preference, to be valid, should be made by absolute pledge or mortgage. Neither a private individual nor a corporation, in this State, can create valid preferences by means of an instrument amounting in effect (regardless of what it may be called by the parties) to a common law assignment.—Kendall v. Bishop, 76 Mich. 634. Where the instrument creating the preference, although nominally a mortgage, by its own terms divests the corporation of its property and places the same in the hands of a trustee with full power to continue the business, and to manage, sell and distribute the assets, it amounts to a common law assignment and will be set aside at the instance of unsecured creditors. Conley v. Collins, 119 Mich. 519-521; Hill v. Mallory, 112 Mich. 387; Pettibone v. Byrne, 97 Mich. 85; Burnham v. Haskin, 79 Mich. 35; Kendall v. Bishop, 76 Mich. 634.

19. Bank of Montreal v. Salt & Lumber Co., 90 Mich. 345; Brown v. Grand Rapids Parlor Furniture Co., 58 Fed. Rep. 286, 22 L. R. A. 817; Schufeldt v. Smith, 131 Mo. 280, 29 L. R. A. 830; Nappanee Canning Co. v. Reid, Murdock & Co., 159 Ind. 614.

20. City of Kalamazoo v. Power

Co., 124 Mich. 74-83; Michigan Telephone Co. v. St. Joseph, 121 Mich. 502-509; Detroit v. Mutual Gas-Light Co., 43 Mich. 594-599; Joy v. Jackson & Mich. P. R. Co., 11 Mich. 155-163.

21. By C. L. 1897, Sec. 8527, the general law of Michigan provides, that, "All corporations shall, when no other provision is specially made, be capable, in their corporate name, to sue and be sued, appear, prosecute and defend all actions and causes to final judgment and execution, in any courts or elsewhere."

22. Randall v. Dudley, 111 Mich. 437.

23. In an action against the Detroit Musicians' Benevolent & Protective Association, the defendant showed that it was incorporated as Detroit Musical Benevolent & Protective Association. It was known by both names. The variance was held immaterial. Meurer v. Detroit etc. Protective Ass'n, 95 Mich. 451-454. The West River National Bank of Jamaica, Vermont, was presumed identical with the West River National Bank of Jamaica, under a plea of general issue, in the case of Thatcher v. West River National Bank, 19 Mich. 196-198.

issue waives the objection that the suit has not been brought in the legal name of the company²⁴. Proof of the use of a corporate name is *prima facie* proof of due incorporation²⁵. It is not necessary to set up, in the process or pleadings, that the concern is incorporated²⁶, or that it is a domestic or a foreign corporation²⁷. When corporate existence is shown to have begun, it will be presumed to continue²⁸. It is therefore generally sufficient to characterize the company, as "a corporation organized under the laws of the State of Michigan," or as the case may be, without averring the company's continued existence²⁹.

When a corporation appears in a court of record by an attorney-at-law, his authority from the corporation to so appear will be presumed, until a showing is made to the contrary³⁰.

In matters of litigation, corporations are dealt with, as nearly as may be, like natural persons. The fact that they are constrained to act and speak through agents is regarded in the construction of rules and statutes. For the purpose of administering justice, the courts will, upon occasion, regard the agent as the corporation. Thus, within the scope of his employment, the knowledge of the agent is the knowledge of the corporation³¹;

24. Under C. L. 1897, Sec. 10471, a plea of general issue, without denial of corporate existence thereunder, forecloses the defendant's right to deny the corporate existence of the plaintiff. *Ludington Water Supply Co. v. Ludington*, 119 Mich. 480-487; *Grand Rapids & Ind. R. Co. v. Southwick*, 30 Mich. 444-445. The plea of general issue by a defendant corporation admits that it has been sued by the right name. *Lake Superior Bldg. Co. v. Thompson*, 32 Mich. 293-294.

25. C. L. 1897, Sec. 10194; Act 162 of 1893; p. 263; *Canal Street Gravel R. Co. v. Paas*, 95 Mich. 376; *Wilson Sewing Machine Co. v. Spears*, 50 Mich. 534-537; *Lake Superior Bldg. Co. v. Thompson*, 32 Mich. 293; *Garton v. Unity City National Bank*, 34 Mich. 279.

26. A corporation may be sued in its corporate name without describing it as a corporation. Courts

will not presume that such a name refers to an unincorporated company or partnership, but will presume that it refers to a corporation. *Prussian Ins. Co. v. Eisenhardt*, 153 Mich. 198-202.

27. *Grinnell v. Niagara Fire Ins. Co.*, 127 Mich. 19-22.

28. *Attorney General v. Mich. State Bank*, 2 Doug. (Mich.) 358-363.

29. *Palmiter v. Pere Marquette Lumber Co.*, 31 Mich. 182-183.

30. *Norberg v. Heineman*, 59 Mich. 210.

31. A corporation is charged with notice of facts which come to the notice of its officers or agents in relation to portions of the corporate business over which such officers or agents exercise total or partial control. *Zeigler v. Valley Coal Co.*, 150 Mich. 82-85; *Humphrey v. Eddy Transportation Co.*, 115 Mich. 420-424; *Columbus Sewer Pipe Co. v. Ganser*, 58 Mich. 385.

his statements are its statements³²; his excuse is its excuse³³.

§17. Power to have Perpetual Succession.

Under modern legislation, the succession of a corporation is perpetual in the same sense that a contract for permanent employment is "permanent"³⁴. In other words, the succession is continuous while the corporation exists. Under the reserved power of repeal, the State may bring the corporation to an end at any time. By constitutional provision in Michigan, the duration of general business corporations is limited to thirty years³⁵. Yet, in a very true sense, the advantages of continuous succession are preserved. The death or withdrawal of members, or the failure to elect officers, or the sale or assignment of all the corporate property, or the discontinuance of the corporation as a going concern, or appointment of a receiver, or insolvency, or bankruptcy, or all of these causes combined, work no *ipso facto* dissolution of the corporate entity³⁶. Moreover, it is provided

32. Statements of agents made in the course of the corporate business and within the scope of the agents' authority are treated as declarations of the corporation itself. *Kimball & Austin Mfg. Co. v. Vroman*, 35 Mich. 309-315.

33. In *Braastad v. A. H. Dey Iron Mining Co.*, 54 Mich. 258-260, it was held that the delay of a corporation in taking an appeal was excused by reason of the fact that the sole agent of the corporation in charge of the matter was, on account of the illness of his wife, prevented from performing his duties.

34. A contract for "permanent employment" is not an employment for life, nor until the employee shall become incapacitated. Such a contract is satisfied by employment for any period. The word "permanent" in this relation is construed to mean "permanent while the employment continues." *Sullivan v. Detroit Y. & A. A. R. Co.*, 135 Mich. 661-670.

35. Mich. Const. 1908, Art XII, Sec. 3, and Beecher's notes, provides that: "No corporation shall be created for a longer period than

thirty years, except for municipal, railroad, insurance, canal or sanitary purposes, or corporations organized without any capital stock for religious, benevolent, social or fraternal purposes." Were it not for this inhibition, perpetual charters might be granted. *Green v. Graves*, 1 Doug. (Mich.) 351-357. In *Kent County Agricultural Society v. Houseman*, 81 Mich. 609-614, Justice Grant spoke of this constitutional provision as follows: "The evident intent of this section was to prevent the perpetuation of corporate power and corporate wealth so as to place it practically beyond the reach of the people or the legislature. It was intended to apply to corporations of a private character, organized for profit and the accumulation of wealth, and not to those which were public in their character, and designed solely for the purposes of education and improvement."

36. *Cahill v. Kalamazoo Mut. Ins. Co.*, 2 Doug. (Mich.) 124-140; *People v. Bank of Pontiac*, 12 Mich. 526-537; *Marshall's Corp. p.* 423.

by the State Constitution that, through legislative assent, corporate existence may be renewed. This assent has been expressed by general statute³⁷ as well as in enabling acts, hence, at the will of the stockholders, all Michigan corporations organized under general laws may be made practically perpetual.

§18. Power to have a Corporate Seal.

Formerly a corporation could execute instruments only by the use of its seal. This is no longer the law³⁸. A corporation is not required to have a seal³⁹. Where the use of a seal is necessary, the corporation may affix a "scroll or other device," and this will be sufficient⁴⁰. In practice, where a scroll or other device is used, it should be placed after the name of the corporation, and not after the name of the executing officer; otherwise it may be held to be the personal seal of the officer, and

37. Beecher's Mich. Const. 1908, Art. XII, Sec. 3. ".....the legislature may provide by general laws, applicable to any corporations, for one or more extensions of the term of such corporations, while such term is running, not exceeding thirty years for each extension, on the consent of not less than two thirds of the capital stock of the corporation; and by like general laws for the corporate reorganization for a further period, not exceeding thirty years, of such corporations whose terms have expired by limitation, on the consent of not less than four-fifths of the capital stock." For general extension law, see Act. 328. Pub. Acts 1905, p. 506. Until the Const. Amendment of 1889, (preserved in the Constitution of 1908) the legislature had no power to pass an act permitting extensions, the aggregate of which would exceed thirty years from the date of organization. *Mason v. Perkins*, 73 Mich. 303-319.

38. *Ismon v. Loder*, 135 Mich. 345-349; *Sarmiento v. Boat & Oar Co.*, 105 Mich. 300.

39. C. L. 1897, Sec. 10417, provides that, "No bond, deed of conveyance, or other contract in writing, signed by any party, his

agent or attorney, shall be deemed invalid for want of a seal, or scroll, affixed thereto by such party." This section is construed to apply to instruments executed by corporations. *Ismon v. Loder*, 135 Mich. 345.

40. C. L. 1897, Sec. 9005, provides that, "A scroll or device used as a seal upon any deed of conveyance or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto, or impressed thereon, but this section shall not be construed to apply to such official seals as are, or may be, provided by law." The exception applies to seals of courts and public officers. Corporate seals are not "provided for by law," in the sense of being required. Sec. 9018 (*Id.*) provides, "That, in addition to the mode in which such instruments may now be executed in this state, hereafter, all deeds and other instruments in writing executed... by any private corporation, not having a corporate seal, and now required to be under seal shall be deemed in all respects to be sealed instruments, and shall be received in evidence, as such, provided the word 'seal,' or the

not the seal of the corporation⁴¹. The effect of this would be to leave the instrument unsealed.

The corporate seal impressed upon an instrument executed in the corporate name is presumptive proof of the authority of the executing officer, and that the instrument is a valid corporate act⁴².

§19. Power to Make By-Laws.

By statute, in Michigan, all corporations, where no other provision is specially made, are given power "to make by-laws and regulations consistent with the laws of the State, for their own government, and for the due and orderly conduct of their affairs, and the management of their property"⁴³.

A by-law is a continuing, self-made rule of corporate conduct. To be valid, it must be general and uniform in its operation⁴⁴, certain in its terms⁴⁵, consistent with the charter⁴⁶, reasonable in its requirements⁴⁷, and not in violation of vested rights⁴⁸, nor

letters 'L. S.' are added in the place where the seal should be affixed." Sec. 9019 (Id.) is as follows: 'A seal of a court, public officer, or corporation may be impressed directly upon the instrument or writing to be sealed, or upon wafer, wax or other adhesive substance affixed thereto, or upon paper or other substance affixed thereto by mucilage or other adhesive substance. An instrument or writing duly executed in the corporate name of a corporation, which shall not have adopted a corporate seal, by the proper officer of the corporation under any seal, shall be deemed to have been executed under the corporate seal.'

41. *Regents of University v. Detroit U. M. S.* 12 Mich. 138. But even where the scroll or device intended as a seal has been placed opposite the name of the executing officer, the court may still hold it to be the seal of the corporation, provided the intent to so use it can be gathered from the instrument. *Ismon v. Loder*, 135 Mich. 345-350.

42. *Gray v. Waldron*, 101 Mich.

612-616; *Merrill v. Montgomery*, 25 Mich. 72-76; *Benedict v. Denton*, Walk. Chan. 336. C. L. 1897, Sec. 10196, which provides: "That any corporation, joint stock company, or partnership association, limited, may have a common seal which it may alter at pleasure and that such seal affixed to any instrument purporting to be executed by any such corporation, joint stock company or partnership association, limited, foreign, or domestic, shall be *prima facie* proof of the due adoption of said seal, and that it was affixed to said instrument by due authority, and that said instrument was in fact lawfully executed by such corporation, joint stock company or partnership association, limited."

43. C. L. 1897, Sec. 8527.

44. *Stewart v. Father Matthew's Society*, 41 Mich. 67.

45. *Thomp. Corp. Sec.* 1010.

46. *Stewart v. Father Matthew's Society*, 41 Mich. 67.

47. *Allnut v. Subsidiary High Court*, 62 Mich. 110-113.

48. *Thomp. Corp. Sec.* 1019.

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in restraint of trade⁴⁹, nor retroactive⁵⁰ nor in contravention of law or public policy⁵¹.

Power to make and alter by-laws does not confer power to so adopt a new by-law, or to so amend an old one, as to impair vested rights⁵². Such rights remain unchanged, unless the alteration was made with the assent of the person by whom such rights are claimed. Where express consent is given, the right to object is waived⁵³.

§20. Power to Act as a Trustee.

It is well settled that a corporation has power to receive as a trustee, and to hold in trust, such property as it might hold in its own right. Within this field, its power to act as a trustee is the same as that enjoyed by natural persons⁵⁴.

§21. Power to Incur Partnership Liability.

A corporation may so contract with a private individual, in furtherance of its corporate objects, as to give rise to the partnership relation⁵⁵. But two or more corporations cannot become partners⁵⁶. As to third persons, the partnership liability may be incurred by a corporation, even where no partnership exists, or could exist⁵⁷.

§22. De Facto Powers.

It sometimes happens that a *de jure* corporation assumes the right to carry on a business outside the scope of its charter authority. As to such *ultra vires* acts, it is upon the same footing as a *de facto* corporation. Those who have recognized its apparent power by dealing with it, are estopped to deny that its power, as to such dealings, is lawful. The State alone can

49. Bailey v. Master Plumbers Ass'n, 103 Tenn. 99, 46 L. R. A. 561.

50. Carlisle v. Saginaw Valley & St. Louis R. Co., 27 Mich. 315-317.

51. Pulford v. Fire Dept., 31 Mich. 457-465.

52. Kern v. Arbeiter Verein, 139 Mich. 233-245; Pokrefky v. Fireman's Fund Ass'n, 121 Mich. 456.

53. Wheeler v. Order of Iron Hall, 110 Mich. 437; Starling v. Royal Templars, 108 Mich. 440;

Becker v. Farmers' Mut. Ins. Co., 48 Mich. 610.

54. White v. Rice, 112 Mich. 403-408; Maynard v. Woodward, 36 Mich. 423.

55. Cleveland Paper Co. v. Courier Co., 67 Mich. 152-158.

56. In White Star Line v. Star Line, 141 Mich. 604-610, Justice McAlvay said: "The law appears well settled that corporations can not enter into copartnership with each other."

57. Cleveland Paper Co. v. Courier Co., 67 Mich. 152-158.

restrain the usurpation of authority, except in instances where no estoppel exists and where individual rights are invaded⁵⁸.

§23. Corporate Franchises.

The franchises of a private corporation consist of those rights and privileges conferred upon it by the State, not possessed by natural persons under the general law⁵⁹.

Franchises are classified as follows.

- (a) The right to be a corporation;
- (b) The right to act as a corporation;
- (c) The right to have, use and exercise exceptional powers and privileges not conferred upon natural persons under general laws⁶⁰.

The first and second classes of franchises, namely the right to be and act as a corporation, can not be transferred by lease, mortgage, sale, or in any other manner, without express legislative authority⁶¹.

Contrary to the numerical preponderance of authority⁶², and in accordance with the more advanced conceptions of corporate powers, special franchises are, in Michigan, held to be transferable, except where transferability is negated by the express terms of the grant⁶³.

58. *Electric Light Co. v. Wyandotte*, 124 Mich. 43-48; *Calkins v. Bump*, 120 Mich. 335-342; *Detroit Street Ry. v. Mills*, 85 Mich. 634-648; *Potter v. Saginaw Union Street Ry.*, 83 Mich. 285-297.

59. *In Bank of Augusta v. Earle*, 13 Peters 518, 10 L. ed. 311. Chief Justice Taney said: "Franchises are special privileges conferred by a government upon individuals, and which do not belong to the citizens of the country generally of common right."—See also *California v. Cent. Pacific R. Co.*, 127 U. S. 40, 32 L. ed. 150.

60. *Citizens Street R. Co. v. Common Council*, 125 Mich. 673-678.

61. *Joy v. Jackson & Mich. P. R. Co.*, 11 Mich. 155-163. There being no statutory authority in Michigan permitting transfer of the right to be and act as a corporation, such franchises are non-transferable. *Citizens St. R. Co.,*

v. Common Council, 125 Mich. 673-679.

62. *Marshall's Corp.* page 206.

63. *Mich. Tel. Co. v. City of St. Joseph*, 121 Mich. 502-509; *City of Kalamazoo v. Power Co.*, 124 Mich. 74-83; *Detroit v. Mutual Gas-Light Co.*, 43 Mich. 594. Even before the enactment of the statute permitting transfer of special franchises (Act 112 of 1889, p. 126; C. L. 1897, Secs. 8572-8573) it was the established law in this State, that a corporation, unless restricted by the grant itself, had power to transfer, by mortgage or by absolute sale, all of its franchises, other than its right to organize, exist, have succession, and exercise eminent domain. *Joy v. Jackson & Mich. P. R. Co.*, 11 Mich. 155-163; *Detroit v. Mutual Gas-Light Co.*, 43 Mich. 594-599; *Mich. Tel. Co. v. St. Joseph*, 121 Mich. 502-509.

Where a corporation sells its franchises, the vendee takes them subject to the same obligations that were imposed by them upon the vendor⁶⁴.

When a corporation possesses a franchise granted without time limit, the law implies that the franchise is for the life of the corporation, which, under the constitution of Michigan, can not, except in special instances, exceed thirty years. Under this constructive limitation, the franchise ceases with the corporation, and is not renewed by renewal of the corporate charter⁶⁵.

64. *Township of Grosse Pointe v. Detroit, etc. Ry.*, 130 Mich. 363-366; *Mich. Tel. Co. v. City of St. Joseph*, 121 Mich. 502-509; *Detroit v. Mutual Gas-Light Co.*, 43 Mich. 594-599.

65. *Rockwith v. State Road Bridge Co.*, 145 Mich. 455; *Wyandotte Electric Light Co. v. Wyandotte*, 124 Mich. 43.

The rule above stated is inapplicable where franchise is granted to the corporation, "it successors or assigns" (*Detroit Citizens St. Ry. Co. v. Detroit*, 64 Fed. 628); and also in cases where the duration of the corporation is unlimited.—*Louisville Trust Co. v. Cincinnati*, 76 Fed. 296.

CHAPTER IV.

CORPORATE DUTIES, LIABILITIES AND DISABILITIES.

- §24. Corporate Duties.
- §25. Liabilities.
- §26. Disabilities.—Ultra Vires Acts.

§24. Corporate Duties.

The first duty of a corporation is to obey the law¹. Violation of the law of its being is punishable by the death penalty of ouster². Regardless of charter limitations, all corporations have legal power to perform all requirements of the law of the land³, and when a corporation loses its financial ability to fulfill its obligations toward the public or the State, that fact warrants its extermination⁴. So, too, when a corporation ceases to be able to carry out the objects for which it was formed, it becomes the duty of the directors to cause its dissolution, the payment of its debts, and distribution of its net assets. If, after demand, the directors fail to do this, the stockholders, or any of them, may invoke the aid of equity to that end⁵. When through

1. *Middleton v. Flat River Booming Co.*, 27 Mich. 533-535; *People v. Bank of Pontiac*, 12 Mich. 526-536.

2. *Stewart v. Father Matthew Society*, 41 Mich. 67; C. L. 1897, Secs. 9959-9961; *People v. Oakland County Savings Bank*, 1 Doug. (Mich.) 282-291.

3. *Knight v. Female Seminary*, 152 Mich. 616-618.

4. *People v. Sticky Fly Paper Co.*, 144 Mich. 221-230; *Coon v. Plymouth P. R. Co.*, 32 Mich. 248-250. In *People v. Gravel Road Co.*, 105 Mich. 9-13, Justice Grant said: "Inability to perform its functions, no matter what the reason, is one of the most potent grounds of forfeiture."

5. In *Stamm v. Northwestern Mut. Ben. Ass'n*, 65 Mich. 317-328.

the following statement was made by Justice Champlin: "We have here, then, the case of a corporation which circumstances have rendered it impossible to continue to carry on its business successfully, or to attain the object for which it was formed. It has a large fund in its hands which cannot be applied nor used to carry out the original intent for which it was accumulated, and it would appear to be the obvious duty of the managing agents, under the circumstances, to wind up the affairs of the concern voluntarily, under the statute; and, if they neglect to do so, any one interested in the fund may seek relief in a court of equity to obtain a distribution among the members to whom it belongs."

corporate misconduct, the right of ouster has accrued to the State, subsequent good behavior on the part of the corporation will not atone for past misdoings. The right to insist upon forfeiture, when it has once accrued, continues, unless waived⁶. The charter of every private corporation contains the condition, implied if not expressed, that it shall live up to the objects of its organization and abide by the provisions of the general law under which it was created. Failure to faithfully perform these conditions is a breach of the charter contract, and confers upon the State full power of revocation, independent of constitutional reservations and statutory provisions⁷. The necessity for strict State control has become more and more manifest as the number and power of private corporations have increased. The ostensible object of State supervision is the protection of the public and the State. As a matter of fact, however, rational supervision operates to safeguard the corporations themselves. It has a tendency to prevent loose practices, clandestine dealings and reckless over-valuations. Moreover, it tends to render corporate stocks a staple form of investment, thus inviting the channels of industry funds which would otherwise remain dormant. Both the State and the corporations are coming to realize that undue secrecy is as pernicious as undue publicity. The laws relating to the examination of State banks⁸ and requiring the publication of financial statements by such corporations⁹ represent, perhaps, the most rational and salutary advancement in this direction thus far gained in Michigan. Another most important corporate duty is the preservation of the corporation's capital stock. In Michigan it is distinctly held that the capital stock of a private corporations is a trust fund held for the benefit of its stockholders¹⁰, and of its *present and future* creditors¹¹. Deliberate impairment of capital stock is not infre-

6. *People v. Bank of Pontiac*, 12 Mich. 526-537.

7. *People v. Bank of Pontiac*, (Id.)

8. C. L. 1897, Sec. 6110.

9. C. L. 1897, Sec. 6128, Am. Act 107 of 1903, p. 130.

10. In *Lenawee County Savings Bank v. Adrian*, 66 Mich. 273-275, Chief Justice Campbell used the following language: "A corporation is always, so far as its property is concerned, a mere trustee for its stockholders, whose inter-

ests are in its corporate charge."

11. Chief Justice Grant in *Clark v. E. C. Clark Machine Co.*, 151 Mich. 416-424, stated the attitude of our Supreme Court in the following language: "We are compelled to hold that the assessable stock and assets of a corporation constitute a trust fund, not only for the benefit of existing, but also for future creditors." — Citing *American Steel & Wire Co. v. Eddy*, 130 Mich. 266. *Young v. Erie Iron Co.*, 65 Mich. 111-128; *Penin-*

quently visited with serious statutory liabilities¹². The trust fund doctrine, however, is independent of statute law, and rests upon equitable principles. The corporation may not, as against creditors, impair its capital stock by releasing a stockholder from his subscription obligations¹³, nor by exchanging shares for services¹⁴ or property¹⁵ taken at a grossly excessive valuation, nor by purchasing its own shares, except from profits¹⁶; nor by paying unearned dividends¹⁷. It is the duty of every corporation to confine itself to its corporate objects¹⁸. These are to be determined by the purposes declared in the articles of association¹⁹. Both the interest of the State and the protection of the stockholders demand that the corporation shall confine its activities within the designated field. Otherwise the State would have no means of knowing the precise purpose for which any corporation is organized, and stockholders would be unable to foresee the class of operations in which their investments might be employed²⁰.

§25. Liabilities.

We have seen that a corporation is liable upon its contracts made within the scope of its powers, to the same extent, and under the same circumstances, as a natural person²¹. Corporations are also liable for their torts²², even in cases where a

sular Savings Bank v. Stove Polish Co., 105 Mich. 535; *Turnbull v. Prentiss Lumber Co.*, 55 Mich. 387-394; *Upton v. Tribilcock*, 91 U. S. 45; 23 L. ed. 203.

12. See Act 232 of 1903, Secs. 22-23.

13. *Moore v. Universal Elevator Co.*, 122 Mich. 48-59; *Whitaker v. Grummond*, 68 Mich. 249-257.

14. *Peninsular Savings Bank v. Stove Polish Co.*, 105 Mich. 535-538.

15. *Moore v. Universal Elevator Co.*, 122 Mich. 48-61; *Peninsular Savings Bank v. Stove Polish Co.*, 105 Mich. 535-538; *Atlantic Dynamite Co. v. Andrews*, 97 Mich. 466; *McBryan v. Universal Elevator Co.*, 130 Mich. 111.

16. *Clark v. E. C. Clark Machine Co.*, 151 Mich. 416.

17. *American Steel & Wire Co. v. Eddy*, 130 Mich. 266; *Id.* 138

Mich. 403-408.

18. *Detroit Driving Club v. Fitzgerald*, 109 Mich. 670-675; *People v. River Raisin & L. E. R. Co.*, 12 Mich. 389-396. C. L. 1897, Sec. 5477, et seq., provides that bonuses paid in aid of a corporation must be restored, with interest, or profits, if the enterprise is abandoned or removed.

19. *Attorney General v. Lorman*, 59 Mich. 157.

20. *Day v. Spiral Springs Buggy Co.*, 57 Mich. 146-150.

21. *Eureka Iron & Steel Works v. Bresnahan*, 60 Mich. 332-338; *McCracken v. Halsey Fire Engine Co.*, 57 Mich. 361; *Cicotte v. St. Anne's Church*, 60 Mich. 552.

22. "The doctrine which formerly was sometimes asserted, that an action will not lie against a corporation for tort, is exploded. The same rule in that respect now

malicious motive is a necessary element of the wrong²³. A corporation must respond for the fraud of its officers and agents perpetrated in its name and behalf within the scope of the agency²⁴. The fact that the corporation is liable does not relieve the wrongdoers from personal liability²⁵. A corporation may become liable for a tort through ratification²⁶. Liability for a

applies to corporations as to individuals. They are equally responsible for injuries done in the course of their business by their servants. This is so well settled as not to require the citation of any authorities in its support."—Justice Field in *Baltimore & Potomoc R. Co. v. 5th Baptist Church*, 108 U. S. 335, 27 L. ed. 739-744.

23. "It is now well settled that a corporation may be liable in tort, even though a malicious intent is necessary to be proven. The malice of the agent is imputable to the corporation."—Justice McGrath in *Wachsmuth v. Merchants National Bank*, 96 Mich. 426-430. (In this case a banking corporation was held liable for false imprisonment.) "Since..... corporations have taken such common and important parts in the business of the country, and have been created for almost every conceivable purpose where an aggregation of capital can be employed to advantage, it has been considered to be consistent with the principles of justice to hold them to a large measure of the accountability which attaches to individuals. It is well settled in this State that an action can be maintained against a corporation for libel."—Justice Champlin, in *Bacon v. Michigan Central R. Co.* 55 Mich. 224-228; (*Railroad corporation held liable for libel*). See also *Detroit Daily Post v. McArthur*, 16 Mich. 447. The malice of a stockholder is not imputable to a corporation, unless it is shown that the corporation acted upon it. Nor can wealth of a defendant corporation be given in evidence in a slander or a libel

suit under the pretext of showing the degree of credit and the probable weight attaching to the alleged publications. *Randall v. Evening News Ass'n*, 97 Mich. 136-140. In *Cascarella v. National Grocer Co.*, 151 Mich. 15, a corporation was held liable for malicious prosecution. A corporation may, of course, be liable for a trespass (*Bath v. Caton*, 37 Mich. 199), a nuisance (*Brady v. Detroit Steel & Spring Co.*, 102 Mich. 277; *People v. White Lead Works*, 82 Mich. 471) or an assault (*Lindsay v. Wabash Ry. Co.* 141 Mich. 204.)

24. *Laiser v. Appleton Land & Iron Co.*, 130 Mich. 588-590.

25. *Hempfling v. Burr*, 59 Mich. 294-296.

26. *Cascarella v. National Grocer Co.*, 151 Mich. 15-19. In this case, it appeared that Nesen was local cashier of the defendant company. Acting, as he thought, in the interest of the company, he caused the arrest of Cascarella on a charge of larceny. Gamble, defendant's general agent, approved of Nesen's act. The charge against Cascarella proved unfounded and the defendant company was held liable jointly with Nesen, in an action for malicious prosecution. The company's liability was predicated on Gamble's ratification of Nesen's action. The following general principle is deducible from the case: An unauthorized act, performed ostensibly for the corporation by its agent, may be effectively ratified by another agent of the same corporation, provided the ratifying agent himself has general authority to perform the act ratified. See also *Ironwood Store Co. v. Harrison*, 75 Mich.

tort can not be escaped by a corporation on the ground that the act was *ultra vires*²⁷. But where the wrong was committed without prior authority, express or implied, no liability attaches to the corporation in the absence of a clear ratification²⁸. An exception to the rule of corporate liability for torts obtains in favor of charitable institutions. Corporations administering charitable trusts, such as churches and hospitals, are not liable for the negligence of their officers and agents in cases where the resulting injury is inflicted upon one who is, at the time, a participant in the benefaction which the corporation is administering²⁹. A corporation may be held to criminal liability in all cases where commission of the crime charged is within the capacity of a corporation and is punishable by fine. Crimes punishable at discretion by fine or imprisonment are also imputable to corporations, inasmuch as the discretion may be exercised by imposing the pecuniary penalty³⁰. Thus a corporation may be prosecuted criminally for maintaining a nuisance, where the offense is punishable by fine³¹. Examination of the

197-203, where it was held that a corporate agent may ratify the unauthorized acts of a stranger provided the agent had general power to appoint agents for the performance of such acts.

27. "Corporations are liable for every wrong they commit, and in such cases the doctrine of *ultra vires* has no application." Justice Swayne, in *First Nat'l Bank v. Graham*, 100 U. S. 699, 25 L. ed 750-751.

28. *Govaski v. Downey*, 100 Mich. 429-435; *Travis v. Ins. Co.*, 85 Mich. 288; *Turner v. Phoenix Ins. Co.*, 55 Mich. 236-242; *Cascarella v. National Grocer Co.*, 151 Mich. 15.

29. One who participates in the benefaction waives the right to recover damages against the benefactor corporation. He assumes the risk. *Penke v. Grace Hospital*, 130 Mich. 493; *Downes v. Harper Hospital*, 101 Mich. 555, 25 L. R. A. 602. But one who suffers an injury when not a participant in the benefaction may hold the charitable corporation liable. Thus in *Bruce v. Central M. E. Church*,

147 Mich. 230, the defendant was held liable to the employee of a contractor on account of negligently erected staging constructed by defendant for the use of the plaintiff, who was engaged in tinting the walls of a church, and was injured by the breaking of the staging.

30. *Marshall's Corp.* p. 325.

31. *People v. White Lead Works*, 82 Mich. 471. This was a prosecution brought jointly against the corporation and its officers for maintaining a nuisance. Justice Grant, speaking for the court, said: "All the defendants were properly convicted. The officers of the company are jointly responsible for the business. It is not necessary to conviction that they should have been actually engaged in work upon the premises. The work is carried on by employees. The directors and officers are the persons primarily responsible, and therefore, the proper ones to be prosecuted. A fine can be collected against the defendant company, and therefore it is subject to prosecution."

statutes of Michigan relating to crimes³² discloses that the policy of legislation in this State is to visit the offenses of the corporation directly upon the participating officers. Sometimes forfeiture of the corporate charter is expressly included among the penalties³³.

§26. Liabilities.—Ultra Vires Acts.

The early doctrine in Michigan as elsewhere was, that corporate acts unauthorized by the charter were utterly and irredeemably void; that a contract beyond the corporate power—or, to use the accepted phraseology, an *ultra vires* contract—was a total nullity, which no estoppel could sustain, no recognition support, no ratification validate³⁴. In Michigan it is rather in the application, than in the statement of the rule, that the modern modification of the doctrine of *ultra vires* is to be found. There has been no express recantation of the theory first announced, but instead, the decisions disclose a gradual progression toward a more equitable view. "When the reason failed, the rule failed." Entrenched behind its reserved right to amend and repeal charters, the State is no longer menaced by the dangers which were incident to perpetual grants of indestructible corporate powers. The corporate person has ceased to be regarded as a potential malefactor. Instead, it is known as a powerful servant, indispensable to the general welfare. Sound public policy now ascribes to corporate beings substantially the capacities of natural persons³⁵, subject to State control. The change from the old

32. C. L. 1897, Title XIX, p. 3379; as to monopoly, see Sec. 11377, *et seq*; as to gambling in stocks, see Sec. 11373; as to extortion, see Sec. 11400.

33. C. L. 1897, Sec. 11380, also 11354.

34. In *Orr v. Lacey*, 2 Doug. (Mich.) 230-253, decided in 1846 Justice Whipple stated the early position of our Supreme Court as follows: "A corporation possesses only those powers expressly given by its charter. Among those granted to the Indiana State Bank, is a power to discount bills and loan money, reserving upon such loan six per cent per annum, and no more.

There is no provision in the charter which declares that a contract reserving more than six per cent shall be void. No principle, however, is at this day, better settled, than that a court will never carry into effect a contract made in violation of a positive law, any more than they would a contract founded on an immoral consideration. If, therefore, there was an incapacity on the part of the bank to make the contract declared upon, or, if that contract was made in violation of its charter, a court of justice will not lend its aid to carry it into execution."

35. *Eureka Iron & Steel Works v. Bresnahan*, 60 Mich. 332, (1886).

order to the new has been one of those quiet transitions, characteristic of the statesmanship of our highest court.

What is termed "the modern doctrine of *ultra vires*," although never recognized in express terms, is fully supported by Michigan decisions. It may be generalized as follows:

(a) The defense of *ultra vires* cannot be invoked, either for or against the corporation, to defeat liability under a contract which has been fully performed by the opposite party³⁶.

36. In support of this principle, the following Michigan cases are offered:

(a) *Citizens' Savings Bank v. Globe Brass Works*, 15 D. L. N. 849, (decided Nov. 30, 1908). The Globe Brass Works, as maker, and Goldberger, and another, as endorsers, were sued upon a note. Originally, Goldberger had given his personal note to plaintiff, secured by chattel mortgage. The Globe Brass Works, desiring to acquire the mortgaged property free from lien, substituted the unsecured note in suit for the note and chattel mortgage made by Goldberger. On trial it was argued that the note in suit was *ultra vires* because executed to take up Goldberger's private obligation. In denying this, Justice Moore said: "It would be a travesty upon justice if the company could retain these assets free from this lien, and at the same time repudiate the giving of the note which was the sole consideration for the cancellation of the chattel mortgage. The doctrine of *ultra vires* can not be invoked for such a result."

(b) *Rehberg v. Tontine Surety Co.*, 131 Mich. 135, (1902). Suit was brought on four contracts fully performed by the plaintiff. Defendant urged that the contracts were *ultra vires*. Justice Grant in affirming a judgment for the plaintiff, thus stated the attitude of the court: "The defendant is not in position to assert that these contracts are *ultra vires*. There is nothing to indicate that they were not entered into in good faith.

The defendant has received the plaintiff's money. The law estops it to now assert, 'You can not have what I promised to give, because I had no authority to make the contract.'"

(c) *Peterson v. People's Building, Loan & Saving Ass'n.*, 124 Mich. 573, (1900).—The plaintiff brought assumpsit to recover money paid defendant on a stock subscription. Judgment passed for the plaintiff and was affirmed. The recovery was based upon a right of withdrawal embraced in printed matter furnished by defendant. One ground of defense was that the corporation had no power, under the laws of the state of New York, where it was organized, to make an agreement that a stockholder might withdraw his investment. In sustaining the withdrawal provision, and denying that the doctrine of *ultra vires* might be invoked, Justice Moore said: "There is nothing in the record to indicate that, in making the contract which plaintiff says was made, the defendant exceeded its powers; but if there was, we think such a defense ought not prevail unless the law is very clear. It is shocking to one's sense of justice, when a contract has been completed by one of the parties to it, and after he has parted with a large sum of money, and asks the other party to the contract to perform his part of the agreement, to have it said by the other party to the contract: 'In entering upon the agreement I made with you, I exceeded my powers. I will neither perform my contract, nor

(b) When the corporation has, on its part, completed performance of an act transcending or forbidden by its charter, but not otherwise objectionable, the opposite party, who has received the benefit, cannot defeat performance on his part by the plea

return to you your money.'"

(d) *Clement, Bane & Co. v. Michigan Clothing Co.*, 110 Mich. 458, (1896). This was an action of assumpsit for the recovery of the purchase price of a judgment assigned by the plaintiff to the defendant. On trial defendant prevailed, and, on appeal, the case was reversed for error, and judgment entered for the plaintiff. The record disclosed that the defendant corporation never authorized the purchase of the judgment, nor had the purchase been ratified in any formal way. The matter had never been brought before the board of directors. In deciding the case, Justice Moore said: "Under the facts shown by the record, the defendant must be deemed to have ratified the contract of Preston." (The secretary of the company who negotiated for, and purchased, the judgment.) "It has inured to its benefit. It has received a large amount of property by reason of the contract. It can not keep the proceeds of the contract and at the same time repudiate it."

(e) *Dewey v. Toledo A. A. & N. M. Ry. Co.*, 91 Mich. 351. (1892). This was an action of assumpsit brought on a promissory note made payable to the order of James M. Ashley, President of the Toledo, A. A. & Grand Rapids Ry. Co. The said company, by B. F. Jarvis, Auditor, was the maker of the note. The paper was endorsed over to Thomas D. Dewey, the plaintiff, in payment for stock of the Owosso & Northwestern R. R. Co., by him transferred to James M. Ashley, Jr., as trustee. Judgment for the plaintiff was affirmed. It appeared that the stock was acquired for the benefit of the

maker of the note and for the purpose of giving it control of a right-of-way belonging to the Owosso & Northwestern R. R. Co. Although the transfer of the stock was to James M. Ashley, Jr., as trustee, the corporation by which the note was made took possession of the right-of-way, and was found to be the real purchaser. The theory of the defense was, that James M. Ashley was the real purchaser, and that the debt was his debt, and that the note in suit was merely accommodation paper given for his benefit, and that the obligation was therefore *ultra vires* and void. In affirming the judgment of the court below, Justice Long said: "The note in question was given to Mr. Dewey in pursuance of the contract made with him for the transfer of his stock."

* * * The contract is completely executed on his part, and the only thing remaining is the payment of the money in fulfilment of the contract on the part of the company. Under these circumstances the defense that the giving of the note is *ultra vires* will not be permitted."

(f) See also *St. Helen Shooting Club v. Barber*, 150 Mich. 571-578; *Niles v. Benton Harbor, etc., R. Co.*, 154 Mich. 378; *Clement Bane & Co. v. Michigan Clothing Co.*, 110 Mich. 458; *McCracken v. Halsey Fire Engine Co.*, 57 Mich. 361. In the case last cited, it was held that a corporation could not defeat liability for payment of its secretary's accrued salary on the ground that his contract of employment was made *ultra vires* by a by-law. To the same effect see *Donovan v. Halsey Fire Engine Co.*, 58 Mich. 38-41.

of *ultra vires*. The State alone can complain of the corporation's usurpation of power³⁷.

(37) The following cases sustain the proposition of the text:

(a) *Butterworth & Lowe v. Kritzer Milling Co.*, 115 Mich. 1, (1897). This was a bill to foreclose a real estate mortgage. Decree for complainant was affirmed. The mortgage was given to Butterworth & Lowe (a Michigan corporation engaged in the manufacture and sale of machinery), as collateral to a guaranty obligation incurred by it upon the paper of the Milling Co. The latter defaulted and complainant paid the obligations and then brought this proceeding. Defendant claimed, first, that it had no authority to acquire the title to the real estate which it had mortgaged, and second, that, inasmuch as the complainant's purposes were limited by its articles of association to manufacturing, buying and selling milling and other machinery, and merchandise, complainant's undertaking as a guarantor of defendant's obligations was *ultra vires*. The first contention was brushed aside as without merit. The second was resolved in favor of the complainant. Justice Montgomery expressed the views of the court in a brief opinion, from which the following is taken: "The statute under which complainant was organized * * * provides that the articles of association shall state, 'the purpose or purposes for which the corporation is formed, and it shall not be lawful for said corporation to divert its operations or appropriate its funds to any other purpose, except as hereinafter provided.' The question presented is whether this provision was intended to operate upon the contracts of the corporation, or was incorporated into the statute for the protection of the public. We think that the latter view is the correct one. * * * The purpose of the statute, as we construe it, is the

protection of the public and the stockholders. Undoubtedly, any excess of the powers defined is unlawful, to the extent of subjecting the offending corporation to action by the State, or other appropriate proceedings."

(b) *Carson City Savings Bank v. Carson City Elevator Co.*, 90 Mich. 550, (1892). This was an action on promissory notes. Plaintiff recovered and the judgment was affirmed. Among the defenses urged it was claimed that the findings of the court failed to show that the notes were given for any purpose within the power of the company. The elevator company was incorporated under Act No. 26 of 1867, entitled, "An Act to provide for the incorporation of associations for the purpose of constructing, owning and controlling warehouses for the storage of grain and other commodities." The articles of association provided that, "The purpose or purposes of this corporation are as follows: for the purpose of constructing, owning and controlling warehouses, for the purpose of buying, selling, handling and storing all kinds of grain, fruits, vegetables, wool, lime, coal, salt and other commodities." The note in suit was given for money borrowed to carry on the business mentioned in the articles of association. It was contended by defendant that the note was *ultra vires* and void because the purposes recited in the articles of association were broader than the purposes authorized by the terms of the act. In affirming the judgment Chief Justice Morse said: "It may be that it (the corporation) could not organize under the Act of 1867 for as broad a purpose as this, and that its legal franchise, if tested, would be confined to the construction, owning and controlling of warehouses and elevators for storage, but that is a matter

(c) The plea of *ultra vires* should not, as a general rule, prevail, whether interposed for or against a corporation, when it would not advance justice, but, on the contrary, would accomplish a legal wrong³⁸."

(d) Both the corporation and those who have dealt with it

to be determined by the interposition of the public through the attorney general. Every one of these stockholders signed the articles of association, and knew that the object of this company was to engage in the buying and selling of grain and other commodities, as well as the storage of the same. Knowing this, and having voluntarily engaged in the business, and borrowed this money and used it in the building of the elevator, as well as in other business, the defendant will not be permitted to plead that it had no authority under the law to do exactly what its articles of association stated to all the world was its object and purpose to do under and by virtue of its incorporation."

(c) Fifth National Bank v. Pierce, 117 Mich. 376. (1898). This was a suit in chancery for the foreclosure of a mortgage. It was argued by defendant that the mortgage was void because, under the National Banking Act, the bank had no power to take security on real estate. In denying this view, Justice Moore said: "If the bank, in taking this security, has violated any of the provisions of the banking act—a question about which we do not express any opinion,—it may be a reason why the governmental authorities should interfere and forfeit the charter of the bank, but it does not invalidate the mortgage. The authorities are very clear upon this proposition." Citing Union National Bank v. Matthews, 98 U. S. 621, 25 L. ed. 188-190; Butterworth & Lowe v. Kritzler Milling Co., 115 Mich. 1.

(d) In Union National Bank v. Matthews (ante), Justice Swayne

used the following language in announcing the majority opinion of the court: "Where a corporation is incompetent by its charter to take a title to real estate, a conveyance to it is not void, but only voidable, and the sovereign alone can object. It is valid until assailed in a direct proceeding instituted for that purpose. * * * 'Where it is a simple question of authority to contract, arising either on a question of regularity or organization, or of power conferred by the charter, a party who has had the benefit of an agreement can not be permitted in an action founded upon it to question its validity. It would be in the highest degree inequitable and unjust to permit a defendant to repudiate a contract, the benefit of which he retains.' * * * We can not believe it was meant that stockholders, and perhaps depositors and other creditors, should be punished and the borrower rewarded, by giving success to this defense whenever the offensive fact shall occur. The impending danger of ouster and dissolution was, we think, the check, and none other, contemplated by congress. That has always been the punishment prescribed for the wanton violation of a charter, and it may be made to follow whenever the proper public authorities shall see fit to invoke its application. A private person can not, directly or indirectly, usurp this function of the government."

38. Arms Co. v. Barlow, 63 N. Y. 62-69, cited with approval in Dewey v. Toledo A. A. & N. M. R. Co. 91 Mich. 351-362, and Carson City Savings Bank v. Carson City Elevator Co., 90 Mich. 550.

as such are estopped from asserting corporate incapacity arising through defects in its organization³⁹.

The defense of *ultra vires* is not favored by our courts. The law of estoppel is liberally invoked to defeat it. It has been held in this state, by eminent authority, that an *ultra vires* contract, while executory on both sides, might be renounced as void by either party thereto without liability for damages⁴⁰. This rule is well supported by precedents⁴¹. Where a corporation has entered into an *ultra vires* contract, any non-assenting stockholder may obtain the aid of equity to restrain performance of the illegal undertaking while the contract remains wholly executory⁴². If

39. *Shadford v. Detroit, etc., Ry.*, 130 Mich. 300-304; *Monroe Water Co. v. Frenchtown*, 98 Mich. 431-437; *Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282-288; *Merchants & Manufacturers' Bank v. Stone*, 38 Mich. 779-782. For further citations to the same point see Sec. 50, note 11.

40. *Day v. Spiral Spring Buggy Co.*, 57 Mich. 146. (1885). This was an action of assumpsit brought to recover the value of 32 tons of excelsior sold and delivered by the plaintiff to the defendant. The excelsior had been bought *on speculation* and the purchase was clearly unauthorized by the defendant's charter. The contract covered 174 tons. Only 32 tons had been delivered. Defendant sought to recoup damages for the non-performance of the remainder of the contract. Plaintiff denied the right of recoupment on the ground that the contract was *ultra vires*. This contention was sustained by the court, and plaintiff was allowed to recover the value of the goods delivered. The principal question in the case was, whether or not the plaintiff was estopped by her dealings to deny that the contract was *ultra vires*. In deciding the case, Chief Justice Cooley said:

"Power on the part of such corporation to enter into contracts of speculation being withheld for reasons of public policy, for the protection of shareholders and the

general good of the community, the act neither of one party, nor of both, in entering into it can work an estoppel against setting up the invalidity. A rule of law established for the public good can not be thus defeated. A corporation can not, by the mere acts of individuals, be given a power which the state for general reasons has withheld from it.

"Parties may also be estopped, in some cases, from disputing the validity of a corporate contract when it has been fully performed on one side, and where nothing short of enforcement will do justice * * * but this is not such a case. The contract has only been performed in part. * * * No valid ground for estoppel is therefore found to exist in the case. * * * The defendant has had the goods, and there is no want of equity in requiring it to make payment. * * * The plaintiff had a right to sell her manufactures and to be paid for it; the defendant has received something of value from her, and there is manifest equity in its being required to make payment, notwithstanding it exceeded its power in the purchase."

41. *Cook's Corp.* Sec. 681, and cases there collected.

42. *Fletcher & Sons v. Circuit Judge*, 136 Mich. 511-513. See also *Detroit & Erin P. R. Co. v. Circuit Judge*, 109 Mich. 371.

the contract is severable, and no inequity would result, and no estoppels have intervened, there is authority in this state for saying that the remedy by injunction is open to any non-assenting stockholder, at any time before the contract has been fully executed by one of the parties to it⁴³. It has been repeatedly held that stockholders who participate in an act are estopped from attacking its validity⁴⁴. It is also held that a stranger to the transaction, whose property rights are not affected thereby cannot raise the question of *ultra vires*. A corporation has no implied power to lend its credit to another⁴⁵, nor can it become an accommodation maker, endorser, surety or guarantor in the absence of express charter authority⁴⁷; but the defense of *ultra vires* cannot be invoked to defeat corporate paper, regular on its face, in the hands of a *bona fide* purchaser⁴⁸. Where a corpora-

43. *Day v. Spiral Spring Buggy Co.*, 57 Mich. 146-150.

44. *Butterworth & Lowe v. Milling Co.*, 115 Mich. 1; *Lucas v. Frint*, 111 Mich. 426-435; *Clark v. E. C. Clark Machine Co.*, 151 Mich. 416-421; *Fourth National Bank v. Olney*, 63 Mich. 58-63.

45. *Collins v. Rea*, 127 Mich. 273-276; *Potter v. Saginaw Union Street Ry.*, 83 Mich. 285-297; *Beecher v. Marquette, etc., Co.*, 45 Mich. 103-110.

46. *Clark, Mason & Co. v. Parker, Webb & Co.*, 131 Mich. 139; *Stillwell-Bruce, etc., Co. v. Niles Paper Mill Co.*, 115 Mich. 35.

47. A corporation has no implied power to become a surety in a transaction in which it has no interest.—*Knickerbocker v. Wilcox*, 83 Mich. 200-207. When an officer or agent of a corporation gives a corporate note in payment of an individual obligation, the transaction is *prima facie ultra vires*. The taker of such paper is put upon inquiry as to such officer's authority. Proof that the officer or agent had general power to execute commercial paper in the name of the company has no tendency to prove his authority to make like paper for purely private purposes. *Merchants' National Bank v. Detroit, etc., Knitting Works*, 63 Mich. 620; *McLellan v. Detroit File Works*, 56 Mich. 582; see also *Riverside Iron Works v. Hall*, 64 Mich. 165. In *McLellan v. Detroit File Works* (ante), Chief Justice Cooley held that: "The general authority to make commercial paper in the name of a corporation is given to be exercised for the benefit and in the business of the corporation, but not for the benefit of the business of others; and it is therefore obvious that one who takes such paper, with knowledge that it is not given for a corporate purpose, can have no claim to the protection which the law accords to a bona fide holder."

48. In *Genesee County Savings Bank v. Michigan Barge Co.*, 52 Mich. 438-446, Justice Sherwood laid down the following rule: "Where a corporation has under any circumstances power to issue negotiable paper, the bona fide holder has the right to presume that it was issued under the circumstances which gave the requisite authority, and the negotiable paper of a corporation, which appears on its face to have been duly issued by such corporation, and in conformity with the provisions of its charter, is valid in the hands of a bona fide holder." See also *Woodcock v. First National Bank*, 113 Mich. 236-240; *Fletcher*

tion has accumulated a fund without authority and for an unauthorized purpose, it becomes charged with the obligations of a trustee; the fund is held as a trust fund for the benefit of the contributors, to whom it must be returned *pro rata*, according to their respective contributions⁴⁹. The decisions applying the doctrine of *ultra vires* in the various states are in irreconcilable confusion. Outside a few well settled principles, approval or disapproval of the defense is ruled by the facts and equities of each particular case. Application of the doctrine is, in practice, governed rather by the conscience of the court than by technical adherence to inflexible rules. It must be a barren record indeed, in which a modern court of last resort will fail to find an estoppel or some other controlling principle, sufficient to prevent the plea of *ultra vires* working an injustice.

& Sons v. Circuit Judge, 136 Mich. 511-513. In the case last cited it was decided that usurious bonds would be held valid in the hands of a bona fide purchaser. One who takes paper of a corporation signed by an officer who is himself a payee is put upon inquiry as to the authority of the corpor-

ate agent to execute such paper. One who purchases under these circumstances is charged with notice that the paper is presumptively *ultra vires*. New York Iron Mining Co. v. Negaunee Bank, 39 Mich. 646-653.

49. Calkins v. Bump, 120 Mich. 335-342.

CHAPTER V.

PREPARATION FOR INCORPORATION.

- §27. Preliminary Considerations.
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§27. Preliminary Considerations.

Questions of ethics¹, procedure² and law immediately confront the attorney who has been employed to conduct the organization

1. The lawyer lays the foundation of the corporation. In some degree—usually in a marked degree—he influences its fundamental policies. His duty to his client, if not his duty to the public as a citizen, should lead him to insist upon *safety*—safety to the corporation and its incorporators through laws obeyed—safety to investors through honest values honestly administered.

In a large measure, the procurement of corporate capital is dependent upon public confidence. A small enterprise, starting with the funds of a few, and prospering,

will, as a rule, eventually seek to enlarge its working capital. This is, not infrequently, the turning point in the company's career. Prosperity imposes its own peculiar burdens. The corporation's need for increased capital to meet its growing pay rolls, to carry its increased stock of materials, and to accommodate its extending roll of patrons, not infrequently strains the company's credit to the breaking point. Now, if the concern has been so organized, and so conducted, as to command public confidence, additional capital may be procured. If confidence is wanting,

of a corporation. Articles of association, by-laws, minutes of first meetings—and, perhaps, a prospectus, subscription agreements, promoter's contracts, transfers of property, and forms for special stock certificates—are to be drafted. Each of these items has, or may have, a far reaching influence upon the future of the company. Care, skill and forethought are requisite to the successful accomplishment of the task. The soundness of the attorney's work is to be tested throughout the life of the corporation. Errors and insufficiencies may give rise to liabilities years afterwards. Too often, companies are formed in a spirit of haste that is afterwards repented at leisure.

§28. Selection of the Enabling Act.

A first consideration is the selection of an enabling act broad enough to cover the corporate objects. Organization under an act of insufficient scope may leave the corporation subject to at-

capital will turn away. Inability to obtain funds, under these circumstances means embarrassment, possibly ruin. It follows that the cultivation of public confidence is essential to prudent corporate management. The only way to gain and preserve public confidence is *to merit it*. He serves his corporate clients best who insists upon adherence to sound principles.

It is incumbent upon the bar, as a matter of good citizenship, as well as for prudential reasons, to lend its powerful influence to the work of making corporate "securities" secure. Wise legislation, State examination and fair administration have made our State banks firm in the public faith. Like measures should produce like results in behalf of industrial organizations. When this has been accomplished—when a bogus stock shall be as rare as a bogus dollar—millions of dollars of the people's money will flow into the channels of corporate enterprise. As a matter of business, as a matter of conscience, as a matter of citizenship and good government, the leadership of the bar, individually and collectively, should be exerted to the end that public con-

fidence in corporate enterprises may be established, protected and made permanent.

2. Inasmuch as the information concerning a proposed corporation must often be gathered by the attorney during a hurried interview, and in view of the fact that his work may be seriously delayed for want of data upon some point overlooked, the following lists are submitted for use as reminders.

PRELIMINARY INQUIRIES.

Data for Articles of Association:

- (a) Name;
- (b) Purpose or purposes;
- (c) Place of operation;
- (d) Location of business office;
- (e) Authorized capital stock;
- (f) Par value of shares;
- (g) Terms of special classes of stock;
- (h) Amount authorized of each class;
- (i) Amount subscribed of each class, and by whom;
- (j) Amount paid in, by whom, and how;
- (k) Valuation and legal description of property contributed in payment of subscriptions;
- (l) By whom and in what proportion contributed;

tack by the state³. Having found an act adapted to the desired purposes, its constitutionality should be carefully considered. The number of enabling acts that have been held unconstitutional in this state should stand as a constant warning. The necessity for vigilance in this respect is apparent when we remember that organization under a void law produces, in effect and legal liability, a partnership instead of a corporation⁴.

§29. Articles of Association.

In general, articles of association framed under the laws of Michigan must contain a brief statement of certain material facts enumerated in the statute⁵. For the sake of uniformity, it is sometimes provided by law that the secretary of state shall supply, upon application, suitable blank articles of association for the use of persons incorporating under certain acts⁶. This provision, however, does not preclude the use of written or typewritten articles made in conformity with the statute. In draft-

- (m) Term of existence;
- (n) Full names and addresses of incorporators.

Data for By-Laws:

- (a) Date, place and hour of annual meeting;
- (b) Notice—time and manner of service for stockholders' meetings and directors' meetings;
- (c) Number of directors desired;
- (d) Regulations governing directors' meetings;
- (e) Special powers and duties of officers;
- (f) Checks, notes and acceptances—by whom to be signed;
- (g) Contracts and conveyances—by whom to be executed;
- (h) Certificates of stock—by whom signed, and how transferred;
- (i) Form and custody of seal;
- (j) Bonds of officers;
- (k) Dividend date;
- (l) End of fiscal year;
- (m) Vote required to amend by-laws.

Data for Corporate Records:

- (a) Date, time and place of first meeting;

- (b) Waiver of notice;
- (c) Names of proposed directors, also of president, vice-president, secretary and treasurer;
- (d) Resolutions authorizing purchases;
- (e) Resolutions adopting preorganization contracts and subscriptions;
- (f) Resolutions calling in subscriptions;

General Data;

- (a) Subscription agreements;
- (b) Special stock certificate clauses;
- (c) Preorganization contracts;
- (d) Prospectus;
- (e) Examination of property titles;
- (f) Preparation of transfers;
- (g) Powers of attorney and proxies.

3. *Butterworth & Lowe v. Milling Co.*, 115 Mich. 1-4.

4. *State v. How*, 1 Mich. 512-513; *Burton v. Schildbach*, 45 Mich. 504-511; *Eaton v. Walker*, 76 Mich. 579.

5. *Attorney-General v. Lorman*, 59 Mich. 157-162.

6. Act 232 Pub. Acts 1903, Sec. 2.

ing articles of association under Michigan laws, the skill of the attorney is displayed principally, (a) in the statement of the corporate purposes, (b) the terms of special classes of stock, (c) the preparation of the inventory of property transferred to the corporation in payment of subscriptions, and (d) the drafting of permissible special provisions.

(a) *Statement of Corporate Purposes.*—The statement of corporate purposes may follow the language of the statute, if the statute is sufficiently specific. Thus, under an act authorizing the formation of corporations for the purpose of “printing, publishing, and bookmaking”⁷, the articles may state that, “The purpose or purposes of this corporation are as follows: The purposes of printing, publishing and bookmaking.” Undoubtedly this would be sufficient to entitle the articles to record. But when it is remembered that the articles of association are a vital part of the contract between the corporation and the state, and that they are in the nature of a contract between the corporation, its incorporators and subsequent stockholders, this statement of purposes is clearly open to criticism for indefiniteness. A contractor about to build a house would consent to no such loose specifications. Why should incorporators content themselves with vagaries? It is confessedly of advantage to state the corporate objects *broadly*. Purposes not included, expressly or by reasonable implication, are excluded by construction⁸. Acts done in pursuance of purposes specified in the articles cannot be impeached as *ultra vires* by stockholders and third persons who have dealt with the corporation⁹. A more practical reason for broad statement of powers is found in the fact that, as corporations grow, their purposes become more comprehensive. The articles should, as far as possible, enable expansion without the necessity of amendment. The dangers of overstatement are less serious than those of understatement. If purposes outside the scope of the enabling act are announced, the most practical danger is that the articles will be denied record by the secretary of state. Should the articles be recorded, the corporate existence becomes *de jure* as to its authorized purposes, and *de facto* as to its claimed, but unau-

7. Act 232 Pub. Acts 1903, Sec. 1.

8. “The articles themselves are the sole criterion to ascertain the purpose for which it (the corporation) was formed, and the intent must be gathered alone from the written instrument, and can not be aided, or varied, or contradicted by

testimony or averments *aliunde* the instrument itself.”—Attorney General v. Lorman, 59 Mich. 162.

9. Butterworth & Lowe v. Milling Co., 115 Mich. 1-4; Carson City Savings Bank v. Carson City Elevator Co., 90 Mich. 550.

thorized, purposes. The state alone can object to the usurpation, and it will not, so long as it suffers no inconvenience or injury¹⁰. From what has been said, it follows that corporate purposes should be broadly announced in the articles. But this policy should not be pushed beyond the reasonable and legitimate intent of the enabling act. Remembering that the articles of association are the sole criterion of the corporate purposes¹¹, all permissible objects germane to the true intent of the corporation, within the range of present needs and foreseeable future requirements, should be asserted¹². It is not necessary that the corporation pursue all of its objects. A purpose *claimed* may be held in reserve for use at any time.

(b) *Special Classes of Stock*.—Unless restricted by charter, there is no reason why any Michigan corporation having a capital stock may not, at the time of organization—or afterwards, by unanimous consent of the stockholders—create a class, or classes, of preferred stock. Such shares are, in the absence of statutory provisions, nothing more than ordinary shares, with special contractual provisions annexed¹³. These provisions usually confer the right to a fixed dividend payable in priority to dividends upon the general or “common” stock. When the enabling act permits the insertion of special provisions in the articles of association, for the conduct of the affairs of the corporation, a provision creating preferred stock may be inserted. In the absence of statutory requirements, however, preferred stock may be created by appropriate by-laws¹⁴, or even by resolution¹⁵. When unhampered by statute, the terms of the preference are in general limited only by the ingenuity of the draftsman and the policy of the company.

10. Cook's Corp. Sec. 3.

11. Attorney General v. Lorman, 59 Mich. 157-162; American Matinee Ass'n v. Sec'y of State, 140 Mich. 579-581.

12. As an example of the application of this principle to a corporation organized for the purposes of “printing, publishing and bookmaking,” the following form of statement is suggested: “The purpose of printing, publishing and bookmaking, including job printing, book printing and the printing of newspapers, magazines, periodicals, and pamphlets, both for sale and for hire, and including also

the publication and circulation of the same by all lawful means, and including, as an incident of said printing, publishing and bookmaking business, the acquirement of manuscripts, illustrations and copyrights, the employment of writers, editors and illustrators, and the procurement and ownership of all mechanical means and appliances, and of letters patent thereupon, useful in the accomplishment of said purposes, or of any of them.”

13. Lockhart v. Van Alstyne, 31 Mich. 75.

14. Marshall's Corp. p. 591.

15. Lockhart v. Van Alstyne (Id.).

(c) *Inventory*.—When, at the time of organization, property, real or personal, is transferred to the corporation, the statutes commonly require the incorporators to include in the articles of association a description and valuation of the property so transferred. The true purpose of this requirement is to enable the public in general, and creditors in particular, to determine from the recorded constating instrument the financial status of the company¹⁶. There has been in this state a tendency toward the holding, that good faith compliance with this provision in such a manner that creditors may predetermine for themselves the reasonableness of the valuation by means of the data thus afforded, relieves the incorporators against the consequences of overvaluation, in the absence of actual fraud¹⁷. No decision of our supreme court has, as yet, established this doctrine. It may well be doubted that compliance with a mere form, however strict and however published, will ever be permitted to stand as a substitute for the exercise of the honest judgment of the incorporators. However this may be, it is clearly the duty of the draftsman to prepare the inventory in accordance with the intent of the law, which is, that, from the instrument itself, creditors shall be fairly enabled to form an independent judgment of the value of the property transferred¹⁸. Things of like class may be grouped, and valued together; unimportant items may be described in general terms. Where the statute does not require separate valuation of the items, the valuation at which the whole of the property is taken may be stated in a single, lump sum. The better, practice, however, is to place a separate valuation upon each item, or group of items.

(d) The drafting of special, permissible clauses, in addition to those required by the enabling act, to be inserted in the articles,

16. *Moore v. Universal Elevator Co.*, 122 Mich. 48-61; *McBryan v. Universal Elevator Co.*, 130 Mich. 111; *Atlantic Dynamite Co. v. Andrews*, 97 Mich. 466-471.

17. In *McBryan v. Universal Elevator Co.*, 130 Mich. 111-121, Justice Grant said: "*If the statute required the articles of association to state the property put in as capital stock, it might be held that creditors should deal with the corporation at their own risk. But until the legislature sees fit to enact such a provision, incorporators*

must be required to act in good faith in placing values upon property put in as a part of paid up capital stock, and the right of those dealing with the corporation to rely upon these solemn statements must be preserved." The portion of the foregoing statement in italics was not necessary to the decision of the case. See also *Wood v. Sloman*, 150 Mich. 177.

18. *Laffin & Rand Powder Co. v. Steytler*, 146 Pa. 434, 14 L. R. A. 690.

does not, in Michigan, rise to the dignity of quasi-legislation, as in some of the less conservative states¹⁹. To be permissible, such clauses must go no further than to regulate and direct the exercise of powers already granted. They cannot enlarge the scope of the corporate authority. When the insertion of special clauses is not invited by the terms of the enabling act, such matters should be left for regulation by the by-laws. The associative articles should be confined to the subjects prescribed by the statute.

§30. Corporate Name.

The name adopted and used by a corporation is in the nature of a common law trade mark²⁰. Usurpation of the name of an established corporation—trading upon the name and, therefore, upon the reputation of another—is a fraud upon the public and upon the corporation whose name has been usurped, and, where injury results, will be enjoined. The wrong consists in the special injury to the corporation, and in the imposition upon the public. It is immaterial that the misleading name has been adopted in good faith, if the injury is actually accomplished²¹. When a corporation selects its name for the purpose of obtaining business intended for another company having a like name, it is no defense that the name of the usurping company is the name of its chief stockholder²². When the aid of equity is asked for the

19. In Michigan it is "too well settled to need the citation of authority, that corporations can exercise only such powers as are expressly or by implication granted to them."—Walker v. Commissioner of Insurance, 103 Mich., 344-346. The State alone can create corporate powers.—Isle Royale Land Co. v. Osmun, 76 Mich. 163. The general corporation act of New Jersey enables the incorporators to provide by the associative articles for almost innumerable powers, not inconsistent with the provisions of the act.

20. Lamb-Knit Goods Co. v. Lamb Glove & Mitten Co., 120 Mich. 159; Penberthy Injector Co. v. Lee, 120 Mich. 174; Supreme Lodge K. of P. v. Improved Order, 113 Mich. 133; Williams v. Farrand, 88 Mich. 473.

21. Lamb-Knit Goods Co. v. Lamb, 120 Mich. 159-163; Supreme

Lodge K. of P. v. Improved Order, 113 Mich. 133-137; Myers v. Buggy Co., 54 Mich. 215.

22. Lamb-Knit Goods Co. v. Glove & Mitten Co., 120 Mich. 159-164; Cook's Corp. Sec. 15. Where the name of an incorporator has been adopted by the corporation with his knowledge and without objection, and has been used as a part of the corporate name, he is estopped from denying that such adoption was by his consent. Thereafter the name becomes impersonal, and follows the corporation. The same individual has no right thereafter to employ the name in another enterprise of like character (whether incorporated or not) in such a manner as is likely to mislead the public. Lamb Knit-Goods v. Glove & Mitten Co., 120 Mich. 159; Penberthy Injector Co. v. Lee, 120 Mich. 174; Williams v. Farrand, 88 Mich. 473.

purpose of enjoining the usurpation of a corporate name, the relief prayed cannot be granted unless it is shown that the name was usurped for purposes of deception, or that it has been used under circumstances intended to deceive, or that the similarity of name is such as to mislead persons acting with ordinary care²³. A corporation may be known by more than one name. Upon the principle that corporate names are, in effect, common law trade marks, the corporation is entitled to protection in the use of each and all of the established names by which it is known²⁴. A Michigan corporation may adopt the name of a foreign corporation, provided the latter is doing no business in this state²⁵. This course is not to be recommended, however, in cases where any conflict of rights is likely to eventually occur.

§31. Corporate Purposes.

The corporation is confined to the purposes declared in its articles of association²⁶, and these purposes should be within the terms of the enabling act²⁷. If the purposes expressed are partly within, and partly beyond, the terms of the organic law, *quo warranto* proceedings may be brought by the state to oust the corporation of its rights and franchises. Where the usurpation has been in good faith, the judgment of ouster will not usually be extended beyond the unauthorized purposes²⁸.

23. *Supreme Lodge K. of P. v. Improved Order*, 113 Mich. 133-137.

24. *Philadelphia Trust, etc., Co. v. Philadelphia Trust Co.*, 123 Fed. 534.

25. *Marshall's Corp.* p. 88; *People v. Home Life Insurance Co.*, 111 Mich. 405. In this case it was held that a foreign corporation lawfully doing business in Michigan was not an "organization of this State" within the meaning of section 7510, C. L. 1897, which provided that corporations organized in this State shall not take any name in use by any other organization of this State, or so closely resembling such name as to mislead the public as to its identity. The proceeding in which this opinion was announced was a petition by the Home Life Insurance Co. for leave to file an infor-

mation in the nature of *quo warranto* against the Home Life Insurance Co., a newly-organized Michigan corporation. The prayer of the petition was denied. Had the case been upon a bill in equity, sustained by proofs showing that the Michigan company had chosen its name for the purpose of deception, or that the public had been misled, or was likely to be misled by the similarity of the names, it is probable that a different result would have been reached.

26. *People v. River Raisin L. E. R. Co.*, 12 Mich. 389-396; *Detroit Driving Club v. Fitzgerald*, 109 Mich. 670-675; *Attorney General v. Lorman*, 59 Mich. 157.

27. *Stewart v. Father Matthew Society*, 41 Mich. 67.

28. *Stewart v. Father Matthew Society (Id.)*.

If the articles of association fail to express *any* purpose authorized by the act,—

(a) The organization does not become a corporation either *de jure* or *de facto*²⁹;

(b) Subscriptions made prior to the execution of the defective articles cannot be enforced³⁰;

(c) Unless estopped³¹, creditors can generally hold the members liable as partners³²; and

(d) The state may proceed to oust the organization from the exercise of its assumed rights and franchises³³.

Failure to state an authorized purpose may arise,—

(a) Through vagueness of statement³⁴;

(b) Through statement of purposes wholly excluded by the express language of the act³⁵.

(c) Through statement of purposes wholly excluded by construction³⁶.

(d) Through statement of illegal purposes³⁷.

The statement of a general corporate purpose includes, by implication, all the necessary incidents of that purpose³⁸. The word necessary, in this connection, is used in the sense of "proper" or "expedient," rather than in the sense of "indispensable."

§32. Place of Operation.

A corporation's principal place of operation is that place at which its productive work is accomplished, as, for example, the place where its factory, its store, or its warehouse is located. If permitted by the terms of the articles of association, and if not prohibited by statute, the corporation may have places of business wherever it desires, both within and outside the state. Where the articles provide that the principal place of business shall be located within the state, it is the right of the stockholders to insist upon adherence to this policy. An attempt to remove the principal place of business to a place not contemplated by the articles of association may be enjoined³⁹.

29. *Eaton v. Walker*, 76 Mich. 579; *Marshall's Corp.*, p. 127.

30. *Cook's Corp.* Sec. 186.

31. *American Mirror Co. v. Bulkley*, 107 Mich. 447-450.

32. *Marshall's Corp.*, p. 113.

33. C. L. 1897, Sec. 9959.

34. *Thomp. Corp.*, Sec. 231.

35. *Attorney General v. Lor-*

man, 59 Mich. 157.

36. *Stewart v. Father Matthew Society*, 41 Mich. 67.

37. *Schuetzen Bund v. Agitation Verein*, 44 Mich. 313-315; *State v. How*, 1 Mich. 512.

38. *Harrison Wire Co. v. Moore*, 57 Mich. 610.

39. *Stickle v. Liberty Cycle Co.*, 32 Atlantic Rep. 708.

§33. Capital Stock.

The authorized capital stock of a private corporation is the sum of "money or money's worth" derivable from the sale of its total number of shares at par. "Capital stock paid in" or "paid up capital stock" is the expression used to denote the fund, in money and property, which has come into the possession of the corporation through the sale of its shares. It is to this fund that the "trust fund doctrine" applies⁴⁰. Except under extraordinary circumstances, a corporation cannot sell its shares for less than their face value without imposing upon the purchasers a liability to make up the deficit. This liability subsists for the benefit of present and future creditors⁴¹ and may be enforced either at law or in equity⁴². It is the established rule in Michigan that, in the absence of statutory permission, *de jure* corporate existence cannot be gained until the authorized capital stock has been fully subscribed⁴³.

§34. Capital Stock Authorized.

In the absence of statutory permission to organize with less than the entire capital stock subscribed, the whole capital stock authorized must be subscribed before *de jure* organization is possible⁴⁴. But it is competent for the legislature to so frame the enabling act that organization may be effected with any less amount subscribed. This legislative policy has been severely criticised by our supreme court⁴⁵, but it is a matter wholly within

40. *Clark v. E. C. Clark Machine Co.*, 151 Mich. 416-424; *American Steel & Wire Co. v. Eddy*, 130 Mich. 266; *Peninsular Savings Bank v. Stove Polish Co.*, 105 Mich. 535-538; *Young v. Erie Iron Co.*, 65 Mich. 111-128.

41. *Atlantic Dynamite Co. v. Andrews*, 97 Mich. 466-471. That stock may be sold for less than its face value, under certain circumstances, see *Dummer v. Smeadley*, 110 Mich. 466-477; *Handley v. Stutz*, 139 U. S. 417, 35 L. ed. 227.

42. Liability may be enforced in equity; see *McBryan v. Universal Elevator Co.*, 130 Mich. 111-114; *Turnbull v. Prentiss*, 55 Mich. 387. Liability may be enforced in law; see C. L. 1897, Sec. 8554, *et seq.*

43. *Continental Paint Co. v. Secretary of State*, 128 Mich. 621-626 (explaining *American Mirror, etc., Co. v. Bulkley*, 107 Mich. 447); *International Fair Ass'n v. Walker*, 88 Mich. 62-82; *Swartwout v. Railroad Co.*, 24 Mich. 396-397; *Monroe v. Railroad Co.*, 28 Mich. 275-276.

44. *Continental Paint Co. v. Secretary of State*, 128 Mich. 621-626; *International Fair Association v. Walker*, 97 Mich. 159-164.

45. In *Continental Paint Co. v. Secretary of State* (Id.), Justice Grant said: "The capital stock in many cases is the chief asset of the corporation. The theory is that those dealing with it have the right to assume that this stock is all in the hands of *bona fide* sub-

the discretion of the legislature. Since the corporation alone passes upon the *bona fides* of subscriptions, the subscriptions of irresponsible persons are sometimes taken for the purpose of making a colorable compliance with the statute. While unpaid, such subscriptions are, of course, no protection to creditors, and for practical purposes might as well not exist. It would seem that, since both the state and future creditors are interested in having capital stock responsibly subscribed, some disinterested tribunal should pass upon the regularity and collectibility of all subscriptions taken, before organization is permitted.

In fixing the amount of capital stock to be authorized, regard should be had, primarily, to the legitimate requirements, present and future, of the business. As this is a purely practical matter, varying according to circumstances, it is impossible to outline a practice concerning it which will be generally applicable. It may be said that, where the stock is likely to pass into the hands of many holders, so that future amendments of the articles of associations are likely to be attended by difficulties, it is best to provide for future requirements, by adopting a liberal scheme of capitalization at the outset. If, on the other hand, amendatory control is to rest in the hands of a few, who may exercise it at any time, it is usually best to refrain from attempting to forecast such future needs. The need can be best met when it arises.

Not infrequently, corporations attempt to inflate their capital for the purpose of gaining an apparent stability, not wholly justified by the facts. This practice should be discouraged, both upon moral grounds, and because it leads to embarrassments. The annual reports required by the state, if honestly made, will reveal the true status of the concern. Private reports sent out by commercial reporting agencies will, in all probability, divest the corporation of its mask of strength, thereby casting upon it distrust, and even ridicule or contempt. The annual tax statement of the company will either afford an unpleasant commentary upon the inflated capitalization, or, if consistent with the capitalization,

scribers, liable to assessment to pay the debts of the corporation. There is no statute in this State prohibiting a corporation from incurring debts or borrowing money until all its stock is fully paid. All the law now requires is that the stock be subscribed, and that a certain percentage thereof be paid in, and then the corporation can

proceed to business and incur debts without calling upon the stockholders for further assessments. It is, in my judgment, a very pernicious policy, but that is a matter for the legislature, and not for the courts. There is no such thing as capital stock until it is issued and owned by the subscribers or purchasers."

will impose upon the corporation a useless burden of taxation. In addition to all this, it should be remembered that failure is always a possibility, and that, in the event of failure, the stockholders may be held liable to make good the corporate pretensions by private contributions.

Where property of unknown value is to be transferred to a corporation in payment of subscriptions, the tendency is, usually, to resolve all doubts in favor of the highest valuation that the property may be capable of sustaining under the most favorable circumstances. Unreasonable valuation, when apparent, should never be permitted, except over the most emphatic objection of counsel. Capitalizing hope opens the door to stock jobbery, fraud, and ultimate disaster, and is obviously no fit foundation upon which to build a corporate structure. A safe alternative is presented. Where values are in doubt because property intended to be transferred to the corporation is untested or undeveloped, a small preliminary corporation should be formed for the purpose of doing the pioneer work. Then, when sufficient has been accomplished to afford a rational basis for valuation, the capital of the preliminary company may be enlarged by amendment, or a new company may be organized, and stock may be issued against the developed property.

§35. Par Value of Shares.

When the par value of shares is not fixed by the enabling act, it will be found best to make their face value \$1, \$10 or \$100, per share, according to circumstances. The standard face value of shares is \$100. Deviation from this standard may be warranted. If shares are to be widely distributed among investors of small amounts, the lower par values will be found more convenient. The same is true where shares are to be given away for the purpose of qualifying disinterested persons to become incorporators or directors. To fix the par value of shares at \$25, or at any other unusual figure, invites useless confusion. In all cases the par value of the share should be a multiple of the authorized capital stock.

§36. Capital Stock Subscribed.

Where the articles of association set forth the names of subscribers to capital stock and the number of shares subscribed by each, such articles stand as a several subscription agreement

between the incorporators and the corporation⁴⁶. The implied agreement is, that the corporators will severally pay their respective subscriptions as required by the statute, or as called in by the board of directors⁴⁷.

It is not always absolutely necessary that the preorganization subscribers shall join in executing the associative articles⁴⁸. But the advantages flowing from such joinder are so manifest—the estoppels gained against denial of subscription liabilities are so important⁴⁹—that the practice of having all who are then interested join in executing the articles should be uniform⁵⁰. In instances where some of the incorporators are at a distance,

46. *Valentine v. Water Power Co.*, 128 Mich. 280-284. In deciding this case Justice Long made the following statement: "When a person signs articles of association of a corporation, the subscription itself constitutes the subscriber a stockholder, and he becomes liable to pay the amount, and the corporation becomes obligated to issue the stock to him upon payment of the amount. It is a mutual contract. * * * See also *Carson v. Arctic Mining Co.*, 5 Mich. 288-292; *Dexter & Mason P. R. Co. v. Millerd*, 3 Mich. 91-101.

47. In *Dexter & Mason P. R. Co. v. Millerd* (Id.), presiding Justice Green asked, and answered in the affirmative, the following question: "Would the acts of the defendant in signing the articles of association and subscribing for a portion of the capital stock of the company import a promise to pay the amount of such stock at such times, in such proportions, and on such conditions as the directors should require, upon giving the notice provided by the statute?" In the course of his answer, the learned presiding justice said: "When the company was thus organized, all the provisions of the act under which they associated, relating to the course of procedure to effect the object in contemplation, became part and parcel of the articles of association as fully and completely as if they had been formally written out and signed by

each stockholder."

48. *International Fair Association v. Walker*, 83 Mich. 386; 88 Mich. 62, 97 Mich. 159; *Peninsular R. Co. v. Duncan*, 28 Mich. 130.

49. *Dieterle v. Ann Arbor Paint & Enamel Co.*, 143 Mich. 416.

Objections to "watered stock," fictitious valuations, and that the corporation organized was not the corporation originally contemplated, are waived by those who, without protest, and with knowledge of the facts, participate in the formation of the company. As to the general principles of estoppel applicable under these circumstances, see *Duffield v. Wire & Iron Works*, 64 Mich. 293; *Detroit Driving Club v. Fitzgerald*, 109 Mich. 670-676; *Bissell v. Heath*, 98 Mich. 472.

50. For some cogent reasons showing why it is preferable to have stock subscribers join in the articles of association, see the dissenting opinion of Justice Campbell, in *Peninsular Ry. Co. v. Duncan*, 28 Mich. 130-147, which is, in part, as follows: "We do not understand that there would be any difficulty at the common law in enforcing the promises contained in an agreement of this general nature against the several promisors, where the object to be accomplished was lawful, where a beneficial purpose was in view, and where it was possible to make the several promisors the return which their subscriptions called for. In such

the articles should be sent to them for execution, or they may act by attorney. In the latter case, the written power of attorney should be attached to, and recorded with, the articles of association. Where there is more than one class of stock, the articles should clearly show the number of shares of each class subscribed by each incorporator. It has been held in this State, that, where the statute requires the observation of certain formalities, a subscription taken in the absence of such formalities is unenforceable, except when waiver or ratification has intervened⁵¹. Acceptance of benefits, or exercise of privileges flowing from such a subscription would undoubtedly estop the subscriber from denying liability⁵².

§37. Preliminary Subscriptions.

For the purpose of determining in advance whether or not organization is possible or feasible, it is frequently necessary to seek preliminary subscriptions. To avoid misunderstandings, the preorganization subscription agreements should accurately set forth, in substance, all the material facts which are afterwards to be embodied in the articles of association⁵³. True, such detail of statement is not indispensable, but each omitted fact adds latitude and plausibility to the possible subsequent claim

cases the promises are mutual—acts are done and moneys expended in reliance upon the subscriptions—and the moment the promises are accepted by the organization and action of the corporation to which they are provisionally made, there can generally be no difficulty in their enforcement if the corporation then has it in its power to give the stock subscribed for, and offers to do so. In such a subscription thus accepted there would be all the requisites of a valid contract: proper parties, and a promise made upon a legal and valuable consideration." In stating the majority opinion of the court, in the same case, Justice Cooley said: "We cannot imagine any reasons of public policy for requiring all the preliminary subscribers to sign the articles, or for relieving from responsibility all who do not sign. As the articles

constitute a more formal document than the preliminary subscription usually does, and set forth the definite particulars of the enterprise, it will be more satisfactory and conclusive of the precise work the subscribers purpose to accomplish, and be less likely to leave questions open to dispute between the individual associates and the organization."

51. *Northern Cent. R. Co. v. Eslow*, 40 Mich. 222; *Parker v. Northern Cent. R. Co.*, 33 Mich. 25; *Wright v. Irwin*, 35 Mich. 347; *Carlisle v. Saginaw Valley & St. L. R. Co.*, 27 Mich. 315; *Shurtz v. Schoolcraft & Three Rivers R. Co.*, 9 Mich. 269.

52. *Bissel v. Heath*, 98 Mich. 472; *Duffield v. Wire & Iron Works*, 64 Mich. 293.

53. *Peninsular R. Co. v. Duncan*, 28 Mich. 130-147.

that the corporation organized differs from that to which the subscription was intended to apply. In the absence of estoppels, this claim, if made out, is a complete defense against the subscription contract⁵⁴. Individual, preliminary subscriptions, unless made irrevocable by the express, or implied terms of the statute, remain revocable, as between the subscribers and the corporation, until accepted by the organized company⁵⁵. Where, after organization, acts are performed by the corporation in direct reliance upon the subscription—for example, where the subscriber is permitted to participate in meetings⁵⁶, or where the corporation gives notice of an assessment upon the subscription—the subscription is thereby accepted and ceases to be revocable⁵⁷.

Preliminary subscriptions may be made by joint agreement⁵⁸, or by an assignable contract between the subscriber and the promoter⁵⁹. Where the subscription is in the form of a joint agreement, it is in the nature of a continuing offer and, as against the corporation, is revocable at any time before the corporation has been formed and the subscription accepted⁶⁰. Notice of revocation will be sufficient if given to the person by whom the

54. *Plank's Tavern Co. v. Burkhard*, 87 Mich. 182; *International Fair Ass'n v. Walker*, 83 Mich. 386, 88 Mich. 62, 97 Mich. 159.

55. *Carlisle v. Saginaw Valley & St. L. R. Co.*, 27 Mich. 351-318. The "subscriber is not bound to the corporation, until the corporation is bound to the subscriber. While want of mutuality continues, the subscription is unenforceable by the company." See also *Parker v. Northern Cent. R. Co.*, 33 Mich. 22-24. In *Peninsular R. Co. v. Duncan*, 28 Mich. 130-133, Justice Cooley said "Whether any other agreement could be made or not, the articles of association are not only a contract, but the *only* contract which brings any one within the rights of corporate existence. There can be no corporation without them, and no corporation differing from them. They are the rule and the origin of corporate life. And it is at least anomalous, if, when the statute has laid down so rigidly the terms of the only contract whereby there can be any

corporation, it can permit persons who are not parties to it, to be brought within its rights and obligations by another agreement made in advance, and containing no provisions identifying it, and no authority empowering any one to execute it."

56. *International Fair Association v. Walker*, 83 Mich. 386, 88 Mich. 62.

57. Where organizers join in an agreement to take stock in a corporation to be organized, the contract will be held binding and enforceable, after its acceptance by the company, when its terms have been complied with fairly and in good faith. *International Fair Association v. Walker*, 83 Mich. 386-392; *Peninsular Rv. Co. v. Duncan*, 28 Mich. 139; *Badger Paper Co. v. Rose*, 95 Wis. 145, 37 L. R. A. 162; *Marshall's Corp.*, p. 626.

58. *International Fair Ass'n v. Walker*, 83 Mich. 386, 88 Mich. 62.

59. *Dill Corp.*, p. 179.

60. *Plank's Tavern Co. v. Burkhard*, 87 Mich. 182.

subscription was solicited or to the person in active charge of the organization, or to the corporation itself, after organization and before the subscription has been accepted⁶¹. While, as against the corporation, the right of revocation continues until the moment of acceptance, the subscriber may become liable to his co-subscribers for damages for breach of contract, if he has permitted them to incur expense in reliance upon the mutual agreement to which he is a party⁶². Notwithstanding his revocation, he may be liable to them, although not liable to the corporation⁶³.

Where the preliminary agreement is in the form of an assignable contract between the subscriber and the promoter, in consideration of which the promoter agrees to use his best endeavors to bring about the formation of the proposed company, the arrangement is not generally enforceable as a subscription. It is rather, an agreement to make a subscription at some future time. For breach of such an agreement, the measure of damages is the difference between the par values of the stock, or the subscription price, and the market value, below par⁶⁴, as of the date when the breach occurred.

§38. Capital Stock Paid Up.

Subscriptions are regarded as paid in cash when payment is made in money, or its equivalent. Thus, payment made by check drawn in good faith against an actual deposit out of which the check is paid in due course, is a payment in cash⁶⁵. So also is a payment made by giving a note which is immediately converted into money⁶⁶. A good faith payment by note, where the obligation is designed to be held by the corporation is a payment in property. Where the corporation is authorized to receive both cash and property in payment of subscriptions, the fact that property is mistakenly designated as cash is not very material, provided the property so taken was actually needed and honestly valued⁶⁷. In the absence of statutory requirements to the

61. *Plank's Tavern Co. v. Burkhard*, (Id). *Cook's Corp.* Sec. 167.

62. *Marshall's Corp.*, p. 626; as to the binding force of mutual promises, see *Conrad v. La Rue*, 52 Mich. 83-86, and cases there cited.

63. *Marshall's Corp.*, p. 626.

64. *International Fair Association v. Walker*, 88 Mich. 62-87;

Cook's Corp., Sec. 336.

65. *Carlisle v. Saginaw Valley & St. L. Co.*, 27 Mich. 315, note citing *People v. Stockton*, etc., R. Co., 45 Cal. 306.

66. *Rouse, Hazard & Co. v. Cycle Co.*, 111 Mich. 251, 38 L. R. A. 794.

67. *Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282.

contrary, there is no reason why subscriptions may not be paid by transfer to the corporation of any property of which it is capable of purchasing⁶⁸. For this purpose, services⁶⁹, patent rights⁷⁰, formulas⁷¹, copyrights⁷², good will⁷³, trade marks and trade names⁷⁴, are property. The fact that the statute forbids the acceptance of certain classes of property in payment of subscriptions, does not prevent the corporation from afterwards purchasing such property with the proceeds of subscriptions, if the property is proper for corporate purposes⁷⁵.

§39. Valuation of Property.

When it is permissible under the statute to take property in payment of subscriptions, the valuation at which such property is taken should be reasonable. In fairness to cash subscribers and future creditors, this rule should be strictly applied. Incorporators should not make future creditors unwitting parties to a venture founded upon pretended assets masquerading behind inflated valuations⁷⁶. As to cash subscribers, the wrong of overvaluation is instant in its operation⁷⁷.

§40. Rules of Valuation.

The rules governing the valuation of property transferred to a corporation in payment of subscriptions may be gathered from the Michigan decisions, as follows:

68. *Young v. Erie Iron Co.*, 65 Mich. 111.

69. *Peninsular Savings Bank v. Black Flag Stove Polish Co.*, 105 Mich. 535.

70. *Graves v. Brooks*, 117 Mich. 424.

71. *Wood v. Sloman*, 150 Mich. 177; *Dieterle v. Ann Arbor Paint & Enamel Co.*, 143 Mich. 416.

72. *Schumacher v. Schwencke*, 25 Fed. Rep. 466.

73. *Feige v. Burt*, 124 Mich. 565-568; *Long v. Evening News Association*, 113 Mich. 274; *Williams v. Farrand*, 88 Mich. 473-387. In the case last cited, Justice McGrath said, "Good will may be said to be those intangible advantages or incidents which are impersonal, so far as the grantor is concerned, and attached to the thing conveyed." In *Chittenden v. Witbeck*,

50 Mich. 401-420, Justice Cooley defined good will to be, "The favor which the management of the enterprise has won from the public, and the probability that the old customers will continue to give it their patronage in the future."

74. *Williams v. Farrand*, 88 Mich. 473.

75. *Cook's Corp.*, Sec. 20.

76. *Atlantic Dynamite Co. v. Andrews*, 97 Mich. 466.

77. The effect upon cash subscribers, where over-valuation occurs, may be illustrated as follows: Assume that A, B & C form a corporation capitalized at \$10,000, of which A and B together contribute \$5,000 in cash and C contributes a worthless patent valued at \$5,000. In effect, the immediate result is that A and B acquire a half interest in a valueless piece of prop-

(a) As between the corporation and its creditors, an arbitrary overvaluation, however free from fraudulent intent, leaves the stock issued for the overvalued property, assessable to an amount equalling the difference between the true value of the property and the par value of the stock⁷⁸. By "arbitrary overvaluation" is meant, an excessive valuation placed upon the property recklessly, or without the fair exercise of discretion, or in violation of the discretion, if any, exercised.

(b) Where property has been transferred to a corporation at a valuation carefully made and believed to be fair, the fact that

erty, while C instantly acquires a half interest in \$5,000 in cash. However palpable this inequity may be, it represents a type of manipulation which has been, all too often, characteristic of such corporate enterprises as have sought to derive their capital from the general public. In one form or another, and in a greater or a lesser degree, the principle here illustrated may be discovered lurking in nearly every flamboyant prospectus circulated at large for the floatation of shares.

78. *This proposition is supported by the following cases:*

(a) *Dieterle v. Ann Arbor Paint & Enamel Co.*, 143 Mich. 416. This was a bill filed by a judgment creditor to compel payment upon subscriptions to the amount of \$7,000, which certain of the defendants had attempted to satisfy by turning over to the corporation a worthless formula and the stock of an insolvent corporation. In deciding this branch of the case, Justice Moore used the following language: "In the case at bar, however, there was nothing to indicate to creditors of the defendant company that no cash was paid in, and that the assets consisted wholly of an interest in an insolvent company, and in a secret formula which none of the shareholders except Rice had ever seen, and which he knew to be a fraud. However much the original shareholders may have acted in good faith as to the creditors, what was done was, as to them, a fraud. The case

is within *Moore v. Elevator Co.*, 122 Mich. 48; *McBryan v. Elevator Co.*, 130 Mich. 111. The solvent original incorporators should be required to pay their subscriptions in full if necessary to satisfy the complainant creditor."

(b) *Wood v. Sloman*, 150 Mich. 177. This was an appeal from an order overruling a demurrer to a bill in chancery filed by a trustee in bankruptcy against the Manna Cereal Co., Ltd., *Morris H. Sloman et al.*, to enforce liability upon subscriptions paid in property taken at an overvaluation. Defendants contended that the statute (Chap. 160 C. L. 1897) providing that "contributions to the capital stock may be made in real or personal estate, at a valuation to be approved by all the members subscribing," and providing further for the filing of a schedule of the property transferred, made the valuation placed upon the property by the stockholders conclusive. The order overruling the demurrer was affirmed, Justices Carpenter and Grant dissenting. It appeared that a "formula for the manufacture of an improved cereal breakfast food, held as a trade secret," had been put in at a valuation of \$499,998, and that only \$2 had been paid up in cash. Upon this basis it was attempted to sustain an issue of \$500,000 of stock as fully paid. The par value of the shares was \$1 each, and it appeared that 249,998 shares had been transferred to a trustee to be sold for the benefit of the company at not less than 20

the valuation was mistaken and excessive, discovered afterwards,

cents per share. Of this Justice Ostrander said:

"It will not do to say that the entire capital stock of such an association can be made fully paid and non-assessable by the mere observance of a form, * * * the plan in fact being to sell the stock, for the association, for cash, for a fraction of its par value, "in order to supply cash capital for the said company and to enable it to carry on its operations."

(c) *Moore v. Universal Elevator Co.*, 122 Mich. 48-54. This was a bill in chancery to determine the priority of certain liens. The case grew out of the same organization described in *McBryan v. Universal Elevator Co.*, 130 Mich. 111. The enabling act did not require a property statement in the articles of association. Chief Justice Grant stated the rule of law applicable to the valuation of property under such circumstances, as follows:

"It is a universal rule that when corporators transfer property to a corporation, for which they receive stock, they must act in good faith, and put in the property at its fair worth. Creditors have the right to rely upon the good faith of the stockholders, and to assume that they have contributed, to the stock subscribed, in money or money's worth, or are liable therefor. This liability cannot be evaded by the issuance of fully-paid stock when it is not, or by putting in property grossly in excess of its real value."

(d) *McBryan v. Universal Elevator Co.*, 130 Mich. 111. This was a bill in chancery by the receiver of the Universal Elevator Co., brought against the company and certain of its stockholders to enforce liability for unpaid subscriptions. Complainant appealed from a decree dismissing the bill. The decree was affirmed on the ground that the judgment relied upon by the creditors at whose instance the receiver was appointed, was void.

In disposing of the case the court took occasion to discuss the liability of the subscribers. It appeared that property to the amount of \$63,250 had been transferred to the corporation in payment of subscriptions for a like amount. *No discretion had been exercised* in arriving at this valuation. The enabling act did not require insertion of a property statement in the articles of association. The property consisted of, "Elevator patents, \$27,000; business of the Otto Gas-Engine Co., \$10,000; factory and property, \$15,500; business incidental with mechanical engineering, \$10,750." The patents valued at \$27,000 were of little value. The right to manufacture under them, anywhere in the world, had been previously disposed of to others for \$200. The Otto Gas-Engine Co. business valued at \$10,000 was a mere agency, revocable at the pleasure of the principal, and of no real value. The factory and property valued at \$15,500 represented land that had not been deeded to the company and bonus subscriptions that had not been paid. The incidental business valued at \$10,750 was intangible and valueless. (See also *Moore v. Universal Elevator Co.*, 122 Mich. 48-54). Within four months after filing the articles based upon these valuations, the company filed a statement showing its sole assets to be: Cash paid in, \$17,000; 5 patents, \$46,250." The \$10,750 of stock issued for "business incidental with mechanical engineering" was afterwards surrendered to the company and cancelled. Moore, Stanton & Brotherton, the sole responsible incorporators, had passed no judgment upon the value of the property, but had signed the articles of association as mere "dummies," and upon assurance that they could escape liability by transferring their stock. They transferred their stock accordingly. In passing upon the question of their liability,

gives rise to no liability upon stock issued as fully paid in exchange for such property⁷⁹.

(c) The fact that a schedule of the property taken, stating items and valuations, is recorded together with the articles of association, pursuant to statutory requirement, tends to relax

Justice Grant made the following statement: "In cases where the incorporators passed no judgment upon the value of the assets turned in as capital stock instead of money, the only course left open to the courts, when called upon to determine whether the stock has been fully paid, is to ascertain the actual value of the property which was turned in as capital stock, and hold that the stock is only paid to the extent of the value of the property so found."

Again, "Can original incorporators make a false statement as to the amount of capital stock actually paid in, and escape liability for such false representations, immediately after executing the articles of association, by transferring their stock to other parties? The wrong was done by the original incorporators in making a false statement as to the amount of stock actually paid in. The public, and creditors dealing with the corporation, had the right to rely upon it as true. It would be unjust to visit the sins of the original incorporators upon subsequent stockholders who purchased in good faith. It would be a disgrace to the law if creditors, dealing with the corporation in reliance upon these statements, which they examine in the public offices, where they are on file, had no remedy. Justice and good morals require that they who make such false statements, whether they make them intentionally or, as in this case, recklessly, should respond to damages therefor. The law does not permit them to evade this liability by a transfer of their stock."

⁷⁹. *The following cases sustain this statement of the text:*

(a) *Graves v. Brooks*, 117 Mich. 424. This was a bill in equity brought by a receiver to compel payment of subscriptions. Decree for complainant was reversed. Patents later found to be worth about \$20,000 had been conveyed to the corporation at a valuation of \$100,000. Careful investigation had preceded the making of this valuation, and it represented an honest exercise of discretion. The company was unsuccessful and subsequent events demonstrated that the valuation was a mistaken one. Chief Justice Grant stated the law of the case in the following language. "The case, in all its essential features, is similar to *Young v. Erie Iron Co.*, 65 Mich. 111, where the subject is fully discussed in an opinion by Mr. Justice Morse, concurred in by the entire court. It was there held that, in order to render stock, issued as fully paid and non-assessable, assessable, it is necessary to establish either an intentional fraud in fact, or such reckless conduct in fixing the value of the property conveyed, without regard to its actual value, that an intent to defraud may be inferred. The creditors in that case were remediless. No case of fraud or recklessness having been established, it follows that the contract of the parties must control."

(b) *Young v. Erie Iron Co.*, 65 Mich. 111. This was a bill for a receiver and to compel payment of subscriptions. The defendant company had been organized with a capital stock of \$500,000, of which \$422,000 had been paid up by transfer to the company of a mining lease. In consideration of this transfer, stock had been issued to certain of the defendants as fully paid. A decree levying an assess-

the rule that payment must be made "in money or money's worth"⁸⁰. But the making and recording of such a schedule does not as to creditors, dispense with the requirement that fair discretion shall be exercised in fixing the valuation of property transferred to the corporation in payment of subscriptions. If it appears that arbitrary overvaluation, gross in character, has occurred, the court will place a valuation upon the property, and will hold the subscribers liable for the deficiency found to have existed between the true value of the property and the par value of the shares fictitiously paid up⁸¹.

(d) As between the corporation and a creditor, who, as a stockholder, has participated in making the overvaluation, the fact of overvaluation can not be successfully urged. He is estopped⁸².

ment upon this stock to meet the debts of the company was sought, on the ground that the lease had been overvalued. The project had proven unsuccessful. The court concluded that, as a matter of fact, the valuation placed upon the lease had been made with honest intent and with the exercise of reasonable care and discretion. Under these circumstances the court held, that the stock which had been issued for the lease was fully paid and nonassessable. Justice Morse said "It must be considered as well settled that corporators cannot agree among themselves that property worth only \$80,000 shall be treated as worth \$422,000, and count, at that sum, as so much capital stock paid in, and then proceed to mark their shares as fully paid up and non-assessable upon such false basis, as such action would be clearly a fraud upon the creditors. But it is equally well settled that such *corporators are not responsible for an honest error of judgment, or a mistake in placing a valuation upon property appropriated or used as capital by a manufacturing or mining company. Nor can the fact that a jury or court finds property, of the nature of this leasehold, necessarily fluctuating and speculative in value, worthless now, and but of little ac-*

tual value at the time of its appropriation as capital, be controlling in deciding whether or not such appropriation was fraudulent as against the creditors of the corporation. Such finding will be presumptive evidence of fraud, but if it be shown that those forming the company honestly believed it to be worth the amount specified in the articles, and that their mistake was one of judgment only, their action cannot be considered fraudulent either in fact or in law. The law imposes no penalty of this kind upon a stockholder or trustee of a company for a mistake or erroneous judgment in the honest and faithful discharge of his duties."

80. *Moore v. Universal Elevator Co.*, 122 Mich. 48-54.

81. *Wood v. Sloman*, 150 Mich. 177.

82. *Ten Eyck v. Pontiac, Oxford & Port Austin R. R. Co.*, 114 Mich. 494. A creditor's bill was brought by complainant to recover upon the judgment affirmed in *Ten Eyck v. Railroad Co.*, 74 Mich. 226, amounting to upward of \$30,000. It appeared that stock in the defendant railroad company to the amount of \$1,500,000 had been subscribed and issued upon payment of \$2,500, contributed in equal portions by eight persons, one of

(e) As between the corporation and a stockholder to whom stock, purporting to be fully paid, has been issued for property taken at an overvaluation, the fact of overvaluation can not be successfully raised, in the absence of fraud⁸³.

(f) Incorporators can not escape their subscription liability, as to creditors, by transferring the shares subscribed⁸⁴.

(g) *Bona fide* transferees of stock, upon its face unequivocally fully paid and non-assessable are not liable, either to the corporation or to creditors, even though the stock was originally issued at a discount, or as a gift, or for property taken at a fraudulent overvaluation⁸⁵.

§41. Schedule of Property.

Where the statute requires, or permits, inclusion in the associative articles of a statement of the property transferred to the corporation in payment of subscriptions⁸⁶, such property should be therein described with sufficient particularity to enable its identification, and its independent valuation, by third parties⁸⁷. While the fact that this has been done will not afford a full defense against an established charge of gross and arbitrary overvaluation⁸⁸, it is an act of good faith, *prima facie* showing the exercise of discretion, and for this reason, and because it affords some protection to creditors, it will be viewed with favor by the courts. In other jurisdictions the sufficiency of the description employed has been repeatedly made the pivotal point in the decision of cases⁸⁹. While no Michigan decision has been ruled by this consideration, its importance has been recognized by our Supreme Court⁹⁰.

whom was Junius Ten Eyck, the complainant. The stock had been issued as fully paid, and complainant had received one-eighth of the issue. Under these circumstances it was held that complainant was estopped to deny that the shares were fully paid, and that, as to him, no assessment upon the subscriptions would be decreed.

83. *Peninsular Savings Bank v. Black Flag Stove Polish Co.*, 105 Mich. 535.

84. *McBryan v. Universal Elevator Co.*, 130 Mich. 111.

85. *Young v. Erie Iron Co.*, 65 Mich., 111. In this case it was held that *bona fide* transferees of stock, purporting upon its face to

be fully paid and non-assessable, acquire such shares free from any liability to further assessments to pay the debts of the corporation.

86. C. L. 1897, Chap. 160; Act 232 Public Acts 1903, Sec. 2.

87. *Wood v. Sloman*, 150 Mich. 177.

88. *Wood v. Sloman*, (Id.).

89. *Vanhorne v. Corcoran*, 127 Pa. 255, 4 L. R. A. 386, quoting *Maloney v. Bruce*, 94 Pa. 249; *Reh-fuss v. Moore*, 134, Pa. 462, 7 L. R. A. 663; *Sheble v. Strong*, 128 Pa. 315.

90. *Wood v. Sloman*, 150 Mich. 177; *McBryan v. Universal Elevator Co.*, 130 Mich. 111-121.

§42. Office for Transaction of Business.

The corporation's business office is in theory, and may be in fact, wholly different from the company's "place of operation"⁹¹. The business office is the corporation's home—its place of residence⁹². It is required to be stated in the articles for the purpose, among other things, of making the place where process may be served both patent and certain⁹³. It has been held in Michigan, that an unauthorized removal of the principal office from the place designated in the articles is a violation of the charter⁹⁴, but such removal may be authorized by an amendment of the articles⁹⁵.

The corporation is estopped from denying that its business office is at the place stated in the articles of association⁹⁶. The State, or a municipality may, for purposes of taxation, ignore the residence so claimed by the corporation, and assess the corporate property at the place where the corporation actually resides⁹⁷. In the absence of statutory inhibition, there is no reason why a corporation may not have its place of operation in one or more counties, and its business office in a different county⁹⁸, or even outside the State⁹⁹. Unless restricted by charter, a Michigan corporation may have both its office and its sole place of operation outside the State.

91. *People v. Saginaw Circuit Judge*, 23 Mich. 491-493.

92. *Van Etten v. Eaton*, 19 Mich. 186-191; *People v. Saginaw Circuit Judge*, 23 Mich. 491.

93. C. L. 1897, Sec. 10468.

94. *Underwood v. Waldron*, 12 Mich. 73; *People v. Oakland County Bank*, 1 Doug. (Mich.) 282; *Attorney General v. Oakland County Bank*, Walk. Chan. (Mich.) 90; *People v. Saginaw Circuit Judge*, 23 Mich. 491. In the case last cited, Chief Justice Campbell stated that: "The distinction between the office for the transaction of its business, and the places where more or less of its dealing may be carried on, has been recognized in several instances in our own laws and decisions elsewhere, and the rule has been somewhat rigidly enforced, that the corporation's residence can not be shifted

without permission, and is essential."

95. Act 317 Public Acts 1905, p. 494, C. L. 1897, Sec. 8533.

96. *Detroit Transportation Co. v. Board of Assessors*, 91 Mich. 382.

97. A corporation having its actual office in Detroit but its nominal office in Hamtramck was held properly taxable in Detroit. *Detroit Transportation Co. v. Board of Assessors*, 91 Mich. 382.

98. *Van Etten v. Eaton*, 19 Mich. 191.

99. C. L. 1897, Sec. 8567, provides that corporations having their principal office outside the State shall keep a list of stockholders and a transfer book at their office, if any, within this State. Failure so to do works forfeiture of the charter. Mining companies of the Northern Peninsula are excepted.

§43. Duration.

Where there is no constitutional or statutory limitation, the corporate duration may be perpetual¹⁰⁰. By constitution, all private corporations organized under Michigan statutes, except for railroad, canal, insurance, cemetery, or non-commercial purposes¹⁰¹ are restricted to an existence of thirty years. Renewals, not exceeding thirty years each, are permitted by constitution¹⁰² and are enabled by statute¹⁰³.

§44. Incorporators.

The persons joining in the organization at its inception are variously designated as "charter members," "corporators," and "incorporators." These terms are used interchangeably. The articles being a contract between the subscribers and the corporation, it follows that the corporators must be persons capable of making a valid contract. That they are so will be presumed in the absence of a showing to the contrary. When the statute provides that any specified number of "persons" may join in making articles of association, it refers to natural persons¹⁰⁴. Where a sufficient number of natural persons have joined, it may be immaterial that the articles have been signed by firms and corporations also¹⁰⁵.

§45. Preparation of Other Instruments.

Concerning the preparation of by-laws and corporate records,

100. *Green v. Graves*, 1 Doug. (Mich.) 351-357.

101. *Beecher's Annotated Mich. Const.* 1908, Art. XII, Sec. 3.

102. *Beecher's An. Mich. Const.* 1908, Art. XII, Sec. 3, provides that "The legislature may provide by general laws, applicable to any corporation, for one or more extensions of the term of such corporation, while such term is running, not exceeding thirty years for such extension, on consent of not less than two-thirds of the capital stock of the corporation; and by like general laws for the corporate reorganization for a further period, not exceeding thirty years, of such corporations whose terms have expired by limitation, on the consent of not less than four-fifths of the capital stock."

This provision is but a re-enactment of Article XV, Sec. 10, Const. 1850, as amended in 1899. Were it not for this provision the legislature would have been powerless to authorize renewal of corporate existence beyond an aggregate term of thirty years. *Mason v. Perkins*, 73 Mich. 303; *Seneca Mining Co. v. Osmun*, 82 Mich. 573.

103. Act No. 328 of Public Acts of 1905.

104. *Marshall's Corp.* p. 73; *Hochgraef v. Milward*, 38 Mich. 469-473.

105. Under a statute requiring not less than five subscribers to the articles of association, several co-partnerships and corporations, in addition to the required number of natural persons, joined as

something will be said elsewhere¹⁰⁶. Conveyances to the corporation, will, of course, be drawn as though running to a natural person, except that, instead of using words of inheritance in the usual places, the words "successors and assigns" will be substituted¹⁰⁷.

§46. Transfers to the Corporation.

Deeds and bills of sale running to a corporation about to be organized, may be executed in advance, and will not be, on that account, defective, if duly delivered at the time of, or after, organization¹⁰⁸. The fact that the corporate life is limited does not prevent the corporation from taking title in fee¹⁰⁹. Creditors cannot complain of the fact that a debtor transfers all of his property to a corporation in exchange for shares of its stock. The shares are subject to levy and sale, hence the creditors are presumptively uninjured¹¹⁰.

§47. The Prospectus.

The prospectus should contain a clear, candid, accurate and complete statement of the scope and plan of the proposed corporation¹¹¹. For expression of matters of opinion, given as such, and not stated as facts, no one is liable, even though the opinion is relied upon and proves erroneous to the detriment of those who have accepted it as correct¹¹². But when an

incorporators. Objection was raised on this account. In disposing of the question, Justice Grant said: "It is doubtful if any of the irregularities were fatal to the organization of a corporation *de jure*, but we do not deem it necessary to decide that question."—*Kalamazoo v. Power Co.*, 124 Mich. 82.

106. See Sec. 468.

107. *Delhi School District v. Everett*, 52 Mich. 314-317.

108. *Cook's Corp.* Sec. 694.

109. *Delhi School District v. Everett*, 52 Mich. 314.

110. *Pault v. Billings-Drew Co.*, 127 Mich. 11-12; *Scripps v. Crawford*, 123 Mich. 173.

111. For the purpose of securing conservatism in, and definite responsibility for, the statements contained in the prospectus, coun-

sel will do well to announce in advance that the prospectus is to be signed by some or all of the responsible parties interested in the promotion. If the parties are acting in good faith, there will be no objection to this, as it clearly adds force to the instrument. If the parties are not acting in good faith, it is well that counsel be early advised of this fact, so that withdrawal from further service may be made.

112. *Getchell v. Dusenbury*, 145 Mich. 197; *Dieterle v. Ann Arbor Paint & Enamel Co.*, 143 Mich. 416-423; *Hasse v. Freud*, 119 Mich. 358-360; *French v. Ryan*, 104 Mich. 625-630. In the case last cited, it was held that representations as to the probable future earnings of a going concern, made by one hav-

opinion is stated as an established fact, liability may arise if the statement is acted upon and occasions damage by its untruth¹¹³. Just where the liability will fall must depend upon the circumstances of the case. It is well established in Michigan, that fraudulent intent is not necessary to render a false representation actionable. The fact that the representation was false, and that the complaining party has rightfully relied upon it to his injury is sufficient to establish the liability¹¹⁴. An omission to state material facts may amount to a fraud¹¹⁵. The prospectus is not a part of the contract between the corporation and subscriber to its stock. The contract is embodied in the charter, by-laws, subscription, and stock certificates. But false statements contained in a prospectus, when relied upon, may be received as evidence of fraud¹¹⁶. In the absence of clear ratification, the corporation incurs no liability on account of pre-organization frauds perpetrated by its promoters by means of the prospectus, or otherwise. Mere retention of benefits does not amount to ratification of the fraud¹¹⁷. Until organized, a

ing superior knowledge, and with design to deceive, amount to fraud, if relied upon.

113. In *Martin v. Veana Food Co.*, 153 Mich. 282-291, Justice Ostrander said: "Undoubtedly, one may, without legal liability for results, permit another, for a consideration, to share his hopes, however adroitly the statement of his hopes may be phrased. He may not, by actual misstatement and without liability, induce the belief that the venture is without other risk than the usual risk of an established and prosperous business. The claim of plaintiff is that defendants represented as actual that which they hoped might become actual; that he paid his money, relying upon the representations. We are of opinion that it cannot be said, as matter of law, that plaintiff is entitled to no relief.

114. In *Holcomb v. Noble*, 69 Mich. 396-399, Justice Campbell made the following statement: "If there was in fact a misrepresentation, though made innocently, and its deceptive influence was effec-

tive, the consequences to the plaintiff being as serious as though it had preceded from a vicious purpose, he would have a right of action for the damages caused thereby, either at law or in equity." See also *Christian v. Michigan Debenture Co.*, 134 Mich. 171-178.

115. A secret royalty contract, undisclosed to stockholders by the promoters, was set aside. *Fred Macy Co. v. Macey*, 152 Mich. 164; 143 Mich. 138. "Fraud may be consummated by suppression of facts and of the truth, as well as by open false assertions. Fraudulent concealment is a matter of equitable jurisdiction as well as fraudulent assertion." Further, "The jurisdiction of the court of chancery in this State to try cases and grant relief from the consequences of fraud is as old as the jurisprudence of the State."—Justice Grant in *Fred Macy Co. v. Macey*, 143 Mich. 138-150-153.

116. *Peterson v. Building, etc., Association*, 124 Mich. 573.

117. *Wright v. St. Louis Sugar Co.*, 146 Mich. 555; *St. John's Mfg.*

corporation can have no agent¹¹⁸. In the absence of estoppels, the promoters may be held liable for their own frauds¹¹⁹.

§48. Promoters.

Promoters occupy a fiduciary relation toward the company and its stockholders, and will not be permitted to exact or retain the benefits of secret, unconscionable advantages¹²⁰. Upon discovery of the fact that promoters have obtained a secret profit upon property purchased by them for the corporation, they may be compelled to disgorge¹²¹. Sometimes allowances are made to them, out of such profits, for actual expenses incurred by them, of which the company has had the benefit. But where the promoters themselves have represented that there would be no allowance for promotion expenses, such allowance will not be made¹²². Where a preorganization subscription has

Co. v. Munger, 106 Mich. 90, 29 L. R. A. 63; Sullivan v. Detroit, etc., R. Co., 135 Mich. 661; Rapid Hook & Eye Co. v. DeRuyter, 117 Mich. 547; Durgin v. Smith, 133 Mich. 331.

118. St. John's Mfg. Co. v. Munger, 106 Mich. 90-95.

119. Cuba Colony Co. v. Kirby, 149 Mich. 453; St. Johns Mfg. Co. v. Munger, 106 Mich. 90-95, Halsey Fire Engine Co. v. Donovan, 57 Mich. 318-321. In Christian v. Michigan Debenture Co., 134 Mich. 171, it was held that where a promoter places his individual property in the hands of a corporation for the purpose of strengthening the credit, or enhancing the attractiveness of the concern, such property will be treated as a trust fund for the benefit of those who have acted upon the strength of the representation that the property belonged to the corporation.

120. Fred Macey Co. v. Macey, 152 Mich. 164; 143 Mich. 138. "In those cases where the scheme of organization gives the promoters a power of selecting the directors who are to represent the company in the proposed purchase (of property for corporate purposes) they are bound to select competent and

trustworthy persons who will act honestly in the interest of the stockholders. A purchase made from the promoters under these circumstances will not bind the company, unless it was a fair and honest bargain."—Justice Brown in Dickerman v. Northern Trust Co., 176 U. S. 181, 44 L. ed. 423-435.

121. Cuban Colony Co. v. Kirby, 149 Mich. 453-458.

122. Cuban Colony Co. v. Kirby, (Id). In this case promoters had arranged for the purchase of certain lands in Cuba at \$40,000. To enable themselves to make a secret profit of \$20,000, they caused the contract of purchase to be made out naming \$60,000 as the purchase price. A limited partnership association was then formed under the laws of Michigan with a capital stock of \$65,000. Of this, \$45,000 was paid up in cash by bona fide subscribers, and \$20,000 was subscribed and paid up by transfer to the association of the Cuban contract, upon which the promoters represented \$20,000 had been paid. The truth was that nothing had been paid, and when this was discovered, a bill in chancery was successfully maintained by the association for can-

been obtained by a promoter by means of fraudulent representations, acceptance of the subscription by the corporation does not amount to an adoption of the promoter's wrongful act. In the absence of affirmative proof that the preorganization representations and promises of the promoters have been ratified by the corporation with full knowledge of the circumstances, the promoter's fraud can not be successfully urged for the purpose of defeating subscription liability¹²³. As a general rule, the promoters alone are liable upon preorganization contracts. Where, however, the obvious intent of both parties was that the corporation, and not the promoter should be bound, the courts will make this intent operative. Thus, where a corporation is organized for the express purpose of taking over a contract obtained for its benefit prior to organization, with actual or constructive notice to the opposite party that such is the case, the corporation is bound by acceptance of the contract, and the promoters are without individual liability, the intent of all parties having been to bind the proposed corporation¹²⁴.

Contracts promising promoters donations, or bonuses, contingent upon the organization of a corporation, are valid. When the condition has been performed such contracts may be enforced. The promise to pay is supported by the work done in reliance upon the promise¹²⁵. When a bonus has been promised to a promoter as an inducement to the organization of a corporation, there is no legal reason why he may not use such bonus in making payment for stock subscribed by him¹²⁶.

cellation of the secret profit shares in the hands of the promoters. Some of the shares had been pledged to a *bona fide* holder, and as to these, the association was given the right to pay the debts secured, cancel the pledged stock and recover from the promoters the amount so paid by the association to the pledgee.

123. *Rapid Hook & Eye Co. v. DeRuyter*, 117 Mich. 547; *St. John's Mfg. Co. v. Munger*, 106 Mich. 90.

124. *Esper v. Miller*, 131 Mich.

334.

125. *Stevens v. Corbitt*, 33 Mich. 457-460; *Underwood v. Waldron*, 12 Mich. 90; *Comstock v. Howd*, 15 Mich. 242.

126. *McDermott v. Squier*, 124 Mich. 523. For discussion of a promoter's contract, see *Locke v. Wilson*, 135 Mich. 593. That a municipal corporation can not, directly or indirectly, bind its credit for the promotion of a private enterprise, see *Thomas v. City of Port Huron*, 27 Mich. 320.

CHAPTER VI

ORGANIZATION AND GOVERNMENT.

- §49. Incorporation.
- §50. De Facto Organization.
- §51. The Corporate Government.
- §52. Majority Rule.
- §53. Meetings and Notice.
- §54. Voting.
- §55. Corporate Records.
- §56. Right to Inspect Records.
- §57. By-Laws.

§49. Incorporation.

Incorporation is a voluntary act. The legislature has no power to compel any person or society to become incorporated. Membership in a corporation cannot be conferred upon a person without his consent. It requires his assent to bring him in, not his dissent to keep him out¹. Where there is no corporation, there can be no corporators². No corporation comes into existence, either *de jure* or *de facto*, until the articles of association have been signed and acknowledged³. This associative act gives rise to a corporation *de facto*, which may be developed into a corporation *de jure* by full compliance with all conditions precedent prescribed by the enabling law. These conditions usually consist of payment to the corporation of the amount of capital required by statute to be paid up, and further, in the due recording of the articles of association. Statutes frequently provide that a certified copy of the record of the articles, made under the hand and seal of the Secretary of State, shall be *prima facie* evidence of the due formation, existence and capacity of the corporation⁴.

1. *Mason v. Finch*, 28 Mich. 282-286. "No person can obtain rights of membership in a corporation except in compliance with its charter or governing law, and if that prescribes any conditions or special methods of becoming a member, the law is imperative."—Justice Campbell in *Carlisle v. Sag-*

inaw Valley & St. L. Co., 27 Mich. 315-317.

2. *Eaton v. Walker*, 76 Mich. 579; *Stewart v. Father Matthew's Society*, 41 Mich. 67.

3. *Carmody v. Powers*, 60 Mich. 26-30; *Doyle v. Mizner*, 42 Mich. 332.

4. Act. 232 Pub. Acts 1903, Sec. 9.

There is no general statute in this State directly conferring upon the Secretary of State power to refuse to record articles of association when he believes them defective. A strict censorship of articles of association is, however, maintained by the State department, upon the theory that, there is no law which authorizes or compels the recording of instruments violative of, or not in compliance with, the statutes. The remedy being by mandamus, and the rule of that proceeding being that a clear case must be made out before the writ will issue, the department of State is in a position to exclude from record all articles of association deemed legally objectionable⁵. While this arbitrary exercise of its advantage⁶ by the State department has been the subject of frequent and bitter criticism, there can be no doubt that it has operated to discourage and defeat the *de jure* organization of many malformed or objectionable corporations⁷.

§50. De Facto Organization.

Where incorporators have proceeded in good faith, under a valid statute, and have attempted to organize for a lawful authorized purpose, but through some irregularity have failed of full compliance with the law, a corporation *de facto* results⁸. This is an *actual* corporation, and not merely a corporation by estoppel. It is, except as against the State, protected by the same estoppels that apply to *de jure* corporations. The acts of

5. *Isle Royale Land Co. v. Secretary of State*, 76 Mich. 163. *Jenking v. Osmun*, 79 Mich. 305.

6. In *Isle Royale Land Co. v. Secretary of State*, Id., Justice Long (dissenting) said: "The Secretary of State has no arbitrary power vested in him by the statutes of this State to reject the articles of association of a corporation, because in his judgment it is proposed to carry on a business not provided for by our statutes, especially when one or more of the objects for which the corporation is organized is permitted to be carried out by express provision of the statutes. If the corporation attempts to exercise powers, or carry on a business, not permitted by our statute, and such business is detrimental to the interest

of the State or its citizens, a mode is pointed out to remedy the evil, but this power is not vested in the Secretary of State.

7. *Jenking v. Osmun*, 79 Mich. 305.

8. Justice Long, in *Eaton v. Walker*, 76 Mich. 579-585, made the following statement: "Two things are necessary to be shown in order to establish a corporation *de facto*, viz.: (a) The existence of a charter or some law under which a corporation, with the powers assumed, might lawfully be created. (b) A user by the party to the suit of the rights claimed to be conferred by such charter or law. If the law exists, and the record exhibits a *bona fide* attempt to organize under it, very slight evidence of user beyond this is all that can be required.

corporations *de facto* are upon the same basis as the acts of officers *de facto*⁹. Although incorporators may have failed to comply with the statute in some particulars, yet if they have, in good faith, effected a colorable organization under a valid law, the State alone can take advantage of the defect¹⁰. Both the corporation itself, and those who have recognized its corporate existence by dealing with it are estopped from denying the legality of its organization¹¹.

The existence of a corporation *de facto* is not dependent upon estoppels. For the purpose of transacting business, contracting and being contracted with, suing and being sued, it possesses all of the powers of a *de jure* organization, except as against the State. Even the State can not attack its legality in a collateral proceeding¹², but only by direct suit brought for that express purpose. It has been held that the State itself may be estopped to deny the validity of a corporate charter, even in a direct proceeding, but such an estoppel must arise through a legislative waiver of the defect¹³. In this connection perhaps it should be said that estoppels never arise from ambiguous circumstances. They must be established by facts which are unequivocal and not susceptible to two constructions. Thus, where the acts recognized are as consistent with want of incorporation as with incorporation, no estoppel to deny corporate existence arises¹⁴.

9. *Clement v. Everest*, 29 Mich. 19-23.

10. *City of Kalamazoo v. Power Co.*, 124 Mich. 74-82; *Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282-288; *Detroit City Ry. v. Mills*, 85 Mich. 634-648; *Eaton v. Walker*, 76 Mich. 579, 6 L. R. A. 102. In *Staver & Abbott Mfg. Co. v. Blake*, Justice Grant said: "It is the established rule that those dealing with corporations are estopped to deny the lawful existence thereof, and cannot, therefore, hold the stockholders individually liable, unless such liability is imposed by the statute. This rule is based upon two grounds: (a) That it is against public policy to permit the existence of these corporations to be attacked collaterally in suits between them and others. It is reserved for the State alone to question their legal existence through its law depart-

ment. (b) Because parties have dealt with it as a corporation, and not upon the faith of the individual liability of its stockholders."

11. *Electric Light Co. v. Wyandotte*, 124 Mich. 43-48; *City of Kalamazoo v. Power Co.*, 124 Mich. 74-82; *Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282-288; *Swartwout v. Mich. Air Line R. Co.*, 24 Mich. 388-393; *Detroit City Ry. v. Mills*, 85 Mich. 648; *City of Grand Rapids v. Hydraulic Co.*, 66 Mich. 606; *Eaton v. Walker*, 76 Mich. 579; *Toledo & Ann Arbor R. Co. v. Johnson*, 55 Mich. 456; 49 Mich. 148; *Merchants' & Manufacturers' Bank v. Stone*, 38 Mich. 779; *Day v. Spiral Spring Buggy Co.*, 57 Mich. 150.

12. *Marshall's Corp.*, p. 123.

13. *Attorney General v. Hanchett*, 42 Mich. 436-438.

14. *Fredenburg v. Lyon Lake M. E. Church*, 37 Mich. 476-478; *Doyle v. Mizner*, 42 Mich. 332.

So too, the fact that one may be estopped from denying the legal existence of a corporation does not prevent the introduction of evidence tending to show that the organization was formed for the purpose of perpetrating a fraud¹⁵.

Where a corporation *de facto* reorganizes as a corporation *de jure*, it cannot repudiate contracts made by it as a *de facto* organization. As to third parties who have dealt with it, its status is unchanged. The only change effected is in its attitude toward the State¹⁶. Where a statute is applicable to corporations in general, it includes corporations *de facto*. Thus, under a statute providing for punishment of embezzlement from a corporation, proof of a corporation *de facto* is sufficient to sustain a conviction¹⁷.

The contracts of a corporation *de facto* being valid, it follows that subscription contracts made with it are valid¹⁸. This rule is not applicable however to *preorganization* subscriptions. It is an implied condition of every subscription taken prior to organization, that a *de jure* corporation shall be organized, unless otherwise stipulated. Formation of a *de facto* corporation does not comply with this condition, hence, in the absence of a waiver, the subscription remains unenforceable¹⁹.

§51. The Corporate Government.

The corporation is a republic in miniature. Its charter is its constitution, its by-laws are its statutes, its stockholders are its citizens, its officers are its administrative agents. Like a republic, the corporation is a government by delegated powers—powers delegated by the stockholders and the State to officers and agents. The powers reserved to the stockholders themselves are few, viz.:

- (a) The power to enact, amend and repeal by-laws,
- (b) The power to amend the articles of association,
- (c) The power to elect officers, and
- (d) The power to protect themselves against official fraud and breach of trust.

When stockholders seek to usurp powers that have been

15. Chicago & Grand Trunk Ry. Co. v. Miller, 91 Mich. 166-182.

16. Empire Mfg. Co. v. Stuart, 46 Mich. 482-483; Merchants' & Manufacturers' Bank v. Stone, 38 Mich. 779.

17. People v. Carter, 122 Mich.

668-670; People v. Hawkins, 106 Mich. 479.

18. Schaub v. Coffin, 135 Mich. 435.

19. International Fair Ass'n v. Walker, 97 Mich. 159, 88 Mich. 62, 83 Mich. 386.

delegated to officers, their action is without validity, and is analogous to an action of a mob. In the absence of charter authority, and as a general rule, neither all, nor any, of the stockholders, as such, have a right to intermeddle with the property or concerns of the corporation. They have no power to employ, direct or discharge any corporate officer or agent. Though all of the stockholders join in executing a conveyance of corporate property, the instrument, if unauthorized by due official action, will be ineffectual, unless validated by subsequent ratification, or sustained through some equitable estoppel. The corporation is an entity distinct, individual and separate from the temporary owners of its shares. Though these sell their holdings, the corporation continues unchanged; though they die, the corporation survives unimpaired. As the slave had his being, apart from that of his master, so the corporation exists, separate and apart from its owners, whose interests it is legally bound to serve throughout the period of its existence.

What a corporation cannot do in its corporate capacity, all of the stockholders acting together cannot accomplish for it²⁰. The sum of all of the stockholders is not equivalent to the corporation. So distinct are stockholders from the corporate entity, that they are not charged with presumptive notice of corporate dealings²¹. Nor is the corporation charged with notice by reason of knowledge possessed by its non-official stockholders²². Yet each stockholder is so far a part of the corporation itself that he is bound by judgments against the corporation, and cannot attack the same collaterally, even though the corporation may have had a complete defense which was not interposed²³. But this rule yields to an exception in cases where there is proof that the judgment was collusive or fraudulent²⁴.

It is the general rule that the suit of a stockholder to obtain

20. "If the act or contract of the corporation is void under the law, so also is the joint act or contract of all of the stockholders, designed to accomplish the same purpose and thus evade the law." Chief Justice Grant in *Rough v. Breitung*, 117 Mich. 48-56.

21. *World Mfg. Co. v. Cycle Co.*, 123 Mich. 620-624; *Rice v. Peninsular Club*, 52 Mich. 87-90. In this case Justice Cooley said: "A corporator is not charged with constructive notice of corporate

acts, and may deal with the corporation as a stranger may, where his personal connection with the corporate action is not such as to notify him of reasons to the contrary."

22. *International Wrecking & Transportation Co. v. McMorran*, 73 Mich. 467-470.

23. *Mutual Fire Ins. Co. v. Phoenix Furniture Co.*, 108 Mich. 170.

24. *McBryan v. Universal Elevator Co.*, 130 Mich. 116.

redress for corporate maladministration must be brought in equity; but the rule is not without exceptions. Thus, where all of the other stockholders had conspired to cause the giving and foreclosure of a mortgage for the purpose of wrecking the corporation and appropriating its assets, it was held that a defrauded stockholder might bring an action on the case for the recovery of such damages as he had sustained through the fraud²⁵. Accounting, receivership, injunction—in short, such equitable remedies as may be appropriate according to circumstances—will be granted by the courts for relief of stockholders against frauds and abuses for which no adequate remedy exists within the corporation itself, or on the law side of the court²⁶. And such relief may be granted at the instance of a single stockholder²⁷. Thus where the corporate officers fail to act for the preservation of the corporate property against injury or loss, a stockholder may resort to equity for relief²⁸. As a general rule it is necessary to first request the proper officers of the corporation to take action, but where these officers are themselves the wrongdoers, or where it is a foregone conclusion that they will refuse to act, if requested, such request is not an indispensable condition precedent to the institution of suit by a stockholder²⁹. This proposition rests upon the principle that the courts will not insist upon performance of an obviously idle ceremony for the purpose of grounding a legal right.

§52. Majority Rule.

Except as otherwise provided by statute, corporate action must find its authority in the will of the majority³⁰. When not

25. *Hanley v. Balch*, 94 Mich. 315-318; *Smith v. Thompson*, 94 Mich. 381.

26. *Torrey v. Toledo Cement Co.*, 150 Mich. 86-91; *Edwards v. Investment Co.*, 132 Mich. 1-5; *Miner v. Belle Isle Ice Co.*, 93 Mich. 97-112.

27. *Miner v. Belle Isle Ice Co.* (Id.).

28. *Starr v. Shepard*, 145 Mich. 302-309.

29. In *Miner v. Belle Isle Ice Co.*, 93 Mich. 97-112, Justice McGrath said: "There is no doubt of the power of a court of equity, in case of fraud, abuse of trust, or misappropriation of corporate

funds, at the instance of a single stockholder to grant relief and compel a restitution; and where the holders of the majority of the stock control the directorate, and are themselves the wrong-doers, without any showing that the directors have been requested, or the corporation has refused to act." For case involving discussion of a bill (held insufficient) attempting to interfere with corporate management, see *Aldrich v. Crawford Chair Co.*, 152 Mich. 369.

30. "It cannot be denied that minority stockholders are bound hand and foot to the majority in all matters of legitimate adminis-

otherwise required by charter or by-law, the action of a majority of a quorum sufficiently complies with this principle³¹. Where a by-law requires a vote to be passed by a certain majority, it is held that such action cannot be rescinded by a less majority³².

The law exacts of the majority, fairness and good faith toward the minority. Voting control confers no right to transgress the trust relation which subsists between the corporation, its officers and the stockholders³³. Yet it is competent for any stockholder to acquire a majority of the stock of the corporation. There is no fiduciary relation between stockholders, and the motive inciting the procurement of control is immaterial. Having gained the stock, the right to vote it follows, and the fact that the member in control selects a board of directors agreeable to himself and his policies gives no ground for complaint³⁴.

§53. Meetings and Notice.

The will of the majority, either of stockholders or of directors, must be expressed by way of duly called meetings,

tration of the corporate affairs; and the courts are powerless to redress many forms of oppression, practiced upon the minority under a guise of legal sanction, which fall short of actual fraud. This is a consequence of the implied contract of association, by which it is agreed in advance that a majority shall bind the whole body as to all transactions within the scope of the corporate powers. But it is also of the essence of the contract that the corporate powers shall only be exercised to accomplish the objects for which they were called into existence, and that the majority shall not control those powers to pervert or destroy the original purposes of the corporations."—Justice McGrath in *Miner v. The Belle Isle Ice Co.*, 93 Mich. 97-114, 17 L. R. A. 412; *Sparrow v. E. Bement & Sons*, 142 Mich. 441-455; *Smith v. Smith, Sturgeon & Co.*, 125 Mich. 234; *Joy v. Jackson & Mich. P. R. Co.*, 11 Mich. 155-171.

31. Where a charter authorized the president and directors to make bylaws, it was held that the

president and a majority of the directors could do so. *Cahill v. Kalamazoo Mut. Ins. Co.*, 2 Doug. (Mich.) 123-138. "It is not necessary to the binding action of a board, that each member should take part in its deliberations. The general rule is that a majority of the members of the board constitute a quorum for the transaction of business, and a majority of the quorum have power to bind the corporation by their vote."—Justice Champlin, in *Ten Eyck v. Pontiac, Oxford & P. A. Co.*, 74 Mich. 226-233.

32. *Stockdale v. Wayland School District*, 47 Mich. 226-228.

33. "The law requires of the majority the utmost good faith in the control and management of the corporation as to the minority. It is the essence of this trust that it shall be so managed as to produce for each stockholder the best possible return for his investment."—Justice McGrath in *Miner v. Belle Isle Ice Co.*, 93 Mich. 97-116, 17 L. R. A. 412.

34. *Jones v. Green*, 129 Mich. 203-207.

except in instances where the formalities have been waived³⁵. A majority has no power to bind the minority by proceedings taken at a meeting where the minority members are not present, and of which they have not received proper notice³⁶. At common law, all notices were required to be personal, and any departure from this must find its authorization in statute or by-law³⁷. Thus, notice by mail is nugatory unless so authorized³⁸. In the absence of statutory inhibition, a reasonable by-law providing for the giving of notice by mail is valid³⁹. In the absence of statutory regulation, the parties have a right to provide for such notice of calls, meetings and the like, as they shall see fit. When they have done this, no other notice will be sufficient in the absence of a waiver. Thus verbal notice is inoperative when a written notice is specified⁴⁰. Where the length of the required notice is not specified, the law will require the giving of a notice reasonable according to circumstances—that is, a notice providing sufficient time between its receipt and the event to be attended, to enable the recipient, by the exercise of reasonable diligence, to attend⁴¹. In the absence of proof to the contrary, the law presumes that sufficient notice has been given⁴².

Where by charter or by-law the power to call meetings of the stockholders is vested in the board of directors, such power does not exist in officers of the board, except when they act by virtue of the express instruction of the board, as its agents⁴³. Where important action is to be taken, as, for example, the making of a general mortgage for creditors, good faith requires that the stockholders be given notice⁴⁴. Power to execute such a mortgage being vested in the board, it may be, and usually is, un-

35. *Eureka Iron & Steel Works v. Bresnahan*, 60 Mich. 332-338.

36. *Doyle v. Mizner*, 42 Mich. 332-341; *Macklem v. Fales*, 130 Mich. 66-69.

37. *Tuttle v. Mich. Air Line R. Co.*, 35 Mich. 246-251.

38. *Burhans v. Corey*, 17 Mich. 282; *Tuttle v. Mich. Air Line R. Co.*, 35 Mich. 246-375.

39. *Stradley v. Cargill Elevator Co.*, 135 Mich. 367-375.

40. *Westcott v. Minn. Mining Co.*, 23 Mich. 144-162.

41. In *Covert v. Rogers*, 38 Mich. 363-367, Justice Marston said: "In the absence of any provision for the length of notice.

the law will require it to be given a reasonable time before the meeting is to be held, in order that the person to whom it is addressed may, if sent by mail, be presumed to have received it, and have sufficient time, traveling in the usual and customary manner, to get there." See also *Phoenix Ins. Co. v. Allen*, 11 Mich. 501.

42. *Stradley v. Cargill Elevator Co.*, 135 Mich. 367-377; *Wells v. Rodgers*, 60 Mich. 525.

43. *Dusenbury v. Looker*, 110 Mich. 58.

44. *Macklem v. Fales*, 130 Mich. 66-69.

necessary as a matter of law, to assemble the stockholders and obtain their assent. But as a matter of fair administration, this should always be done where the action is one that works a substantial change in the property or policy of the company. For example, where a bond issue is to be authorized, the mere fact that the directors have power to make such authorization should not be accepted as a warrant for ignoring the opinions and wishes of the stockholders. The observance of business courtesy to stockholders in matters of this kind will frequently be found of practical, as well as of ethical, value. Thus, in the flotation of a bond issue, the strength of the securities will be enhanced by the fact that they were authorized by the unanimous vote of the stockholders, as well as by the board of directors.

Where notices are given of the holding of a meeting at which it is expected that special or exceptional action will be taken, such notices should embody a statement of the object or objects for which the meeting is called⁴⁵. While formal meetings of stockholders, as well as of directors, are the proper and regular way of taking corporate action, there is no objection to any action, even the most important, being taken at an informal meeting at which all stockholders (or all directors, as the case may be) are present, participate and acquiesce. But the absence or objection of any of the members of the corporation would render such meeting irregular, and its proceedings voidable, if not void⁴⁶. All that can be said of such a meeting is, that the parties have, by attendance and participation, waived all objections as to notice and other formalities.

§54. Voting.

In corporations having a capital stock, it is a general rule that each share entitles its holder to one vote on all questions coming before any meeting of the stockholders. One holding a certificate of stock properly endorsed to him may vote the shares which it represents, although the transfer may not have been made upon the books of the company⁴⁷. Production of the endorsed certificate is evidence of this right⁴⁸. Stock certificates

45. *Tuttle v. Mich. Air Line R. Co.*, 35 Mich. 246-251.

46. *Eureka Iron & Steel Works v. Bresnahan*, 60 Mich. 332-338. For a case holding that one who has sold all of his stock can not complain that a meeting has been

held of which he received no notice, see *Anderson Carriage Co. v. Pungs*, 127 Mich. 543-548.

47. *McLean v. Medicine Co.*, 96 Mich. 479-481.

48. *Noller v. Wright*, 138 Mich. 416.

are merely authenticated evidence of title to shares. All of the rights of a stockholder may exist in the absence of any certificate⁴⁹.

Stock standing in the name of an administrator, or in the name of a decedent represented by an administrator, before distribution of the estate, may be voted by the administrator. He may even vote such shares against the wishes of those who are interested as beneficiaries in the shares voted⁵⁰. Shares held by the corporation, or held in the name of a trustee for the benefit of the corporation, have no vote⁵¹. In this State, there is a cumulative voting law in force as to all corporations, other than municipal, insurance and banking corporations, organized under any general law of this State. This law was enacted in 1885⁵² and has been repeatedly amended⁵³. The law was early attacked upon the ground that, as to existing corporations, it impaired vested rights⁵⁴. The correctness of this contention was denied by the Supreme Court of Michigan⁵⁵, and also by the Federal Supreme Court⁵⁶.

§55. Corporate Records.

Records are the permanent corporate memory. Officers and agents change; the books alone remain to perpetuate the history of the corporation's acts and transactions. Accurate and complete records, essential to every other form of business organization, are doubly essential to corporations⁵⁷. Corporate action may be proved by such records⁵⁸. Yet, when no record, or an incomplete record, of corporate action has been made, or preserved, what was done may usually be shown by parol⁵⁹.

49. *May v. McQuillan*, 129 Mich., 392-396.

50. *Jones v. Green*, 129 Mich. 203.

51. *Cook's Corp.*, Sec. 613.

52. Act 112, Pub. Acts 1885, p. 116; C. L. 1897, Sec. 8553.

53. Act 223 Pub. Acts 1903, p. 351; Act 61 Pub. Acts 1905, p. 85; Act 141 Pub. Acts 1907, p. 179. In *Attorney General v. McVichie*, 138 Mich. 387, it was held that the cumulative voting law was inapplicable to partnership associations organized under Chapter 160, C. L. 1897. Act 45, Pub. Acts of 1909, p. 72, extended the benefits of the cumulative law to these as-

sociations. That the cumulative voting law has been inapplicable to State banks since 1887, see *Attorney General v. Bridgman*, 134 Mich. 379.

54. *Attorney General v. Looker*, 111 Mich. 498.

55. *Attorney General v. Looker* (Id.).

56. *Looker v. Maynard*, 179 U. S. 44, 45 L. ed. 79.

57. *Crossette v. Jordan*, 132 Mich. 78-81.

58. *Ten Eyck v. Pontiac & Oxford R. Co.*, 74 Mich. 226-232.

59. *Ismon v. Loder*, 135 Mich. 345-348; *Eureka Iron & Steel Works v. Bresnahan*, 60 Mich.

§56. Right to Inspect Records.

Every stockholder possesses the common law right to examine the books and records of the corporation, in person or by agent, at any proper time and for any proper purpose⁶⁰. But the common law right does not exist for the purpose of enabling the stockholder to gratify idle curiosity⁶¹. The right may be exercised however, for the purpose of obtaining evidence to be used in pending litigation against the corporation, and the rule is not changed by the fact that the books might be brought into court under a subpoena *duces tecum*⁶². When the right of inspection is conferred by statute, the right is absolute and the motive is immaterial⁶³. A stockholder having the right of inspection may make abstracts, memoranda and copies of the records⁶⁴, and may call in the aid of agents, accountants and attorneys⁶⁵. Where the right exists and permission to exercise it is refused, mandamus lies for its enforcement⁶⁶.

The right of inspection carries with it certain burdens. For example, every stockholder, when dealing with the company as a member, is conclusively presumed to know the corporate by-laws⁶⁷. So in dealing with other stockholders, or with directors, a stockholder is presumed in the absence of fraud, to have equal knowledge of the condition of the company⁶⁸.

332-338; Kalamazoo Novelty Wks. v. Macalister, 40 Mich. 84; Township of Taymouth v. Koehler, 35 Mich. 21-3, 4; Handley v. Stutz, 139 U. S. 417, 35 L. ed. 227-232.

60. Woodworth v. Old Second National Bank, 154 Mich. 459-467.

61. People v. Walker, 9 Mich. 328-330. In this case Chief Justice Martin said: "While, in the absence of any statutory provision to that effect, a corporator may, at the common law, have a mandamus to compel the custos of corporate records and documents to allow him to inspect them, yet, to entitle himself to the aid of the court, he must show that he has made a proper demand upon the custos at a proper time and place, and for a proper reason, and has been refused. * * * The principle seems to be, and very properly, too, that the party asking the writ must have some interest

at stake which renders the inspection necessary."

62. Woodworth v. Old Second National Bank, 154 Mich. 459.

63. Thomp. Corp., Sec. 4412; Cook's Corp., Sec. 514.

64. Weiheymayer v. Bitner 88 Md. 325, 45 L. R. A. 446; Cincinnati Volksblatt Co. v. Hoffmeister, 62 Ohio St. 189, 48 L. R. A. 732.

65. Cook's Corp., Sec. 518-519.

66. People v. Walker, 9 Mich. 328-330.

67. Marshall's Corp., p. 885. This presumption does not obtain where the stockholder deals with the corporation upon the footing of a stranger. Pearsall v. Western Union Telegraph Co., 124 N. Y. 256.

68. Walsh v. Goulden, 130 Mich. 531-540. In this case Justice Grant stated that: "In the purchase and sale of stock between

Although executive management of a corporation may be, and generally is, vested exclusively in the board of directors, the stockholders undoubtedly have the right to appoint a committee to investigate the condition of the concern. This is practically nothing more than a combined exercise of their individual right to examine the corporate books. It seems that, where the stockholders regularly pass a resolution requiring investigation, the cost of investigation becomes a liability of the corporation which it may be required to pay⁶⁹.

§57. By-Laws.

By-laws are the self-made statutes of the corporation. All stockholders have constructive notice of them when dealing with the corporation as members, but not when dealing with it as strangers. Non-stockholders are not affected by corporate laws, except where actual notice is shown⁷⁰; nor will courts take judicial notice of by-law provisions⁷¹. By-laws are ordinarily made by the stockholders, but may be made by the directors if the charter so provides⁷². The by-laws are an important factor in determining the rights of members⁷³. One who has availed himself of the rights conferred by a by-law is thereafter estopped to deny the by-law's validity⁷⁴. By-laws must operate equally as to all members⁷⁵.

It is fundamental that a corporation can not override the law of its being⁷⁶. It follows that a by-law inconsistent with the corporate charter, public policy, or the general law of the State, is void⁷⁷. Thus, by-laws can not operate retroactively⁷⁸, nor can they work a forfeiture in the absence to what amounts to

stockholders there must be some actual misrepresentation in order to constitute a fraud. Mere silence is not sufficient. The books of the corporation are open to all stockholders alike, and each may inform himself of the condition of the company."

69. *Star Line of Steamers v. Van Vliet*, 43 Mich. 364.

70. *Hallenbeck v. Powers & Walker Casket Co.*, 117 Mich. 680-684.

71. *Portage Lake, etc., Society v. Phillips*, 36 Mich. 21-23.

72. *Cahill v. Kalamazoo Mut.*

Ins. Co., 2 Doug. (Mich) 137.

73. *Union Mut. Ins. Co. v. Montgomery*, 70 Mich. 587-594; *Michigan Mut. Ass'n v. Rolfe*, 76 Mich. 146.

74. *Stradley v. Cargill Elevator Co.*, 135 Mich. 367-375.

75. *Stewart v. Father Matthews Society*, 41 Mich. 67-69.

76. *Supreme Lodge v. Nairn*, 60 Mich. 44-54.

77. *Pulford v. Fire Dept.* 31 Mich. 458-465.

78. *Carlisle v. Saginaw Valley & St. L. R. Co.*, 27 Mich. 315-317.

due process of law⁷⁹. An unreasonable by-law is void⁸⁰. Thus, a by-law providing that agents of the corporation shall not be deemed its agents, but shall be held to be the agents of those who deal with them, is unreasonable and is a nullity⁸¹. Compliance with a by-law may be waived by the corporation. Thus where a by-law provided that no debts should be contracted except by authority of the board of directors, it was held that, after obligations had been incurred for goods and services of which the corporation had had the benefit, the by-law could not be invoked to defeat liability for payment⁸². So also where by-laws determine the eligibility of members, and one who is ineligible has been, without fraud on his part, admitted to the corporation, the by-law provision making him ineligible is held waived⁸³. Where by-laws provide for annual dues, such dues are not, like unpaid stock subscriptions, assets for the benefit of creditors. So long as the members pay the dues as provided, nothing more can be required. Equity will not compel an assessment of dues for the purpose of paying corporate debts⁸⁴. Power to make and alter by-laws does not confer power to so adopt a new by-law, or to so amend an old one, as to impair vested rights⁸⁵. Such rights remain unchanged, notwithstanding the

79. When a corporation has a right to fine or expel a member, enforcement of the right must be predicated upon an explicit claim or charge brought home to the member, who must be given an opportunity to be heard in his own defense, and an opportunity to be present at the taking of testimony against him, and to introduce evidence in his own behalf. When these rights are accorded and the proceeding is under lawful authority, it will be sustained *Burton v. St. George's Society*, 28 Mich. 260-263. But where these rights, or any of them are withheld, the proceeding is void, *Erd v. Bavarian Assn.*, 67 Mich. 233-236; *Burt v. Grand Lodge*, 66 Mich. 85; *Allnutt v. Subsidiary High Court*, 62 Mich. 110-114; *Pulford v. Fire Dept.*, 31 Mich. 457-464; *Westcott v. Minn. Mining Co.*, 23 Mich. 145; *People v. Mechanic's*

Aid Society, 22 Mich. 86. The right to complain may be lost by laches.—*Bostwick v. Fire Dept.*, 49 Mich. 513.

80. *Allnutt v. Subsidiary High Court*, 62 Mich. 110-113.

81. *Wagner v. Knights of Honor*, 128 Mich. 660-667; *Hoskins v. Rochester Savings & Loan Ass'n*, 133 Mich. 505-508. See also opinion of Justice Brown, in *Knights of Pythias v. Withers*, 177 U. S. 260, 44 L. ed. 762.

82. *McCracken v. Halsey Fire Engine Co.*, 57 Mich. 361.

83. *Wagner v. Knights of Honor*, 128 Mich. 660; *Davidson v. Old People's Mut. Society*, 39 Minn. 303, 1 L. R. A. 482.

84. *Johnson Electric Service Co. v. Chamber of Commerce*, 124 Mich. 115-120.

85. *Kern v. Arbeiter Verein*, 139 Mich. 233-245; *Pokrefky v. Firemen's Fund Ass'n*, 121 Mich. 456.

amendment, unless waived by acquiescence or participation in the amendatory action⁸⁶.

86. *Wheeler v. Order of Iron* *Becker v. Farmer's Mut. Ins. Co.*,
Hall, 110 Mich. 437; *Starling v.* 48 Mich. 610.
Royal Templars, 108 Mich. 440;

CHAPTER VII.

MANAGEMENT—RIGHTS AND LIABILITIES OF OFFICERS AND AGENTS.

- §58. Directors.
- §59. Officers.
- §60. Powers of Officers.
- §61. President.
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- §63. Secretary.
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- §65. General Manager.
- §66. Corporation Counsel.
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- §68. General Powers of Officers and Agents.
- §69. Ratification.
- §70. Agents in Adverse Interests.
- §71. Fraud and Torts of Agents.
- §72. Statements of Officers and Agents.
- §73. Knowledge of Officers and Agents.
- §74. Compensation.

§58. Directors.

The ordinary management of a corporation is vested in its board of directors¹. In their official capacity the directors sustain a fiduciary relation toward the corporation and its stockholders². Thus, if the directors sell corporate property and obtain a secret profit for themselves from the transaction, the secret profit will be treated, in equity, as an asset of the corporation³. But, in the absence of gross misconduct or fraud upon the part of the managing board, a court of equity will not interfere with the management, except pursuant to some statutory authority⁴. Where officers are mere "dummies," used as a blind

1. *Genesee Savings Bank v. Michigan Barge Co.*, 52 Mich. 438-445; *Star Line of Steamers v. Van Vliet*, 43 Mich. 364.

2. Because the corporate books are equally open to all stockholders, a director may lawfully profit by his superior knowledge of the corporation condition, so long as he makes no actual misrepresent-

ation. Mere silence concerning his motives is no fraud.—*Walsh v. Goulden*, 130 Mich. 531-539.

3. *Smith v. Smith, Sturgeon & Co.*, 125 Mich. 234.

4. *Hunter v. Roberts, Throp & Co.*, 83 Mich. 63-71; *Cicotte v. Anciaux*, 53 Mich. 227-235; *LaGrange v. State Treasurer*, 24 Mich. 468-471.

to hide the fact that those in control are plundering the corporation, equity will brush aside the puppet directors and charge the fraud, and its consequences, upon the true source⁵. Fraud is none the less fraud when perpetrated through accomplices⁶.

A corporation can be bound by corporate action only, and where such action is absent, purported corporate contracts are, unless ratified, void for want of mutuality⁷. Individual directors have no implied powers by virtue of that office⁸. Nor would ownership of a majority⁹ or of all of the shares¹⁰ of the corporation confer upon an individual director implied power to bind the corporation.

Where, as is usual, the charter or by laws require the directors to act as a board, their separate concurrence, unless supported by a subsequent ratification, is insufficient to make their act binding upon the corporation¹¹. But when an unauthorized

5. *Chicago & Grand Trunk Ry. Co. v. Miller*, 91 Mich. 166-183.

6. *Lucas v. Friant*, 111 Mich. 426-435; *Jones v. Green*, 129 Mich. 203-207; *Hanley v. Balch*, 94 Mich. 315; *Miner v. Belle Isle Ice Co.*, 93 Mich. 97-110; *Ruttle v. What Cheer Coal Mining Co.*, 153 Mich. 300. In this case Foss was the president, treasurer and general manager of a corporation, for which he had furnished all the capital, and of which he owned all of the stock, except two shares given to "dummy" directors. He assumed entire control of the company, and, without authority, employed Ruttle, who rendered services. Under these circumstances it was held that the act of Foss was the act of the corporation, and that the corporation could not escape liability by disclaiming the contract employment as unauthorized.

7. *Finley Shoe & Leather Co. v. Kurtz*, 34 Mich. 88-91. Action of the board can not be inferred from anything short of concurrent doings. *Bond v. Pontiac, Oxford & P. A. R. Co.*, 62 Mich. 643-649.

8. In *Finley Shoe & Leather Co. v. Kurtz* (ante), Chief Justice Cooley said: "Where joint action is required by law, individual ac-

tion is of no avail, and it at most only puts the individuals under honorary obligations, of which the law can take no notice." Thus, in this case it was held that, where a corporation was indebted, and its individual directors had agreed to give stock to a creditor, but had none to give, the unofficial promise of the directors did not bind the corporation to increase its stock. See also *Lockwood v. Thunder Bay River Boom Co.*, 42 Mich. 536-539; *Bond v. Pontiac, Oxford & P. A. R. Co.*, 62 Mich. 651; *Taylor v. R. D. Scott & Co.*, 149 Mich. 525.

9. *Chase v. Michigan Telephone Co.*, 121 Mich. 631-634.

10. *Rough v. Breitung*, 117 Mich. 48-55.

11. *Johnson v. Farmers' Mut. Ins. Co.*, 110 Mich. 488-490. Upon the principle above stated, forfeitures for non-payment of assessments of mutual insurance companies have been held to be unenforceable in cases where the directors have failed to take the requisite action. *Warner v. Life Association*, 100 Mich. 157; *Miner v. Benefit Association*, 63 Mich. 338; *Bates v. Benefit Association*, 51 Mich. 587; *Baker v. Insurance Co.*, 51 Mich. 243.

act has been ratified it becomes as truly the act of the corporation as though it has been performed pursuant to authority¹². Because individual action of the directors is of no avail, it is essential that the board shall declare the corporate intent, and make all necessary delegations of power, by way of duly called meetings. In the absence of notice to all directors, a portion of the board can not assemble and bind the corporation, even by the unanimous action of the directors present¹³. Proper notice of the meeting, given by implication through some standing rule, or given by actual service, if the meeting be a special one, is essential to enable legal majority action¹⁴.

De facto directors enjoy the same powers as though they were directors *de jure*¹⁵. Failure to hold corporate elections works no impairment of the corporate rights and powers¹⁶. In the absence of an election at the proper time, the old officers hold over with undiminished official capacity¹⁷. Even after the corporate charter has expired by limitation, the last official board continues in the management of the corporate affairs¹⁸. In the absence of a corporate officer, for example a secretary, whose official services are a necessary incident of a meeting, an officer *pro tem* may be appointed, whose acts will be valid¹⁹.

The power of general management being vested in the board of directors²⁰, they have authority, acting as a board, to bind

12. *Anderson Carriage Co. v. Pungs*, 127 Mich. 543.

13. *Broughton v. Jones*, 120 Mich. 462; *Covert v. Rogers*, 38 Mich. 363; *Doyle v. Mizner*, 42 Mich. 332; *Lockwood v. Thunder Bay River Boom Co.*, 42 Mich. 536; *Peek v. Detroit Novelty Works*, 29 Mich. 313; *Taylor v. Scott*, 149 Mich. 525.

14. *Covert v. Rogers*, 38 Mich. 363; *Doyle v. Mizner*, 42 Mich. 332.

15. *Jhons v. People*, 25 Mich. 500; *Swartwout v. Mich. Air Line R. Co.*, 24 Mich. 389; *Walrath v. Campbell*, 28 Mich. 111; *Druse v. Wheeler*, 22 Mich. 439; *Cahill v. Kalamazoo Mut. Ins. Co.*, 2 Doug. (Mich.), 132-136; *Scott v. Detroit Young Men's Society*, 1 Doug. (Mich.) 119.

16. *Cahill v. Kalamazoo Mut. Ins. Co.*, 2 Doug. (Mich.) 132-139.

17. *Kimball v. Goodburn*, 32 Mich. 10. In this case Justice Campbell, in sustaining a discharge of mortgage executed in the name of a defunct corporation by its last secretary, said: "It (the discharge) was executed by a person who is shown to have been the last secretary, and who does not appear to have resigned or lost his official character, which mere lapse of time would not destroy. The mortgage having been paid, its release was a matter of right, and we think the secretary was properly authorized to do the formal act and could do it anywhere."

18. *Kent County Agricultural Society v. Houseman*, 81 Mich. 609-613.

19. *First National Bank v. St. Joseph*, 46 Mich. 526-528.

20. *Genesee Savings Bank v.*

the corporation by all lawful contracts for corporate purposes²¹. They may authorize an officer or agent to settle and compromise claims held by or against the corporation²². They have power to make an assignment for the benefit of creditors²³. In case of insolvency, they have full power to sell all of the corporate property for the purpose of paying the company's debts²⁴. Contrary to the weight of authority in other jurisdictions, the directors of corporations of this State have power to execute mortgages granting preferences to creditors²⁵, and they may do this even though the corporation is insolvent at the time of giving the mortgage²⁶.

Directors who are *bona fide* creditors of a corporation may, if they act in good faith, and pursuant to proper formalities, secure themselves, in preference to other creditors, by a mortgage on the corporate property²⁷. But where a mortgage taken by directors is unconscionable and fraudulent, the courts will not permit it to stand²⁸. The same rule applies to fraudulent mortgages executed to creditors. Where directors have mortgaged the corporate property for the preconceived purpose of having the mortgage foreclosed and the property bid in by a new corporation formed for that purpose and controlled by themselves, or by their "dummies," injured stockholders may fol-

Barge Co., 52 Mich. 438; Star Line of Steamers v. Van Vliet, 43 Mich. 364.

21. Eureka Iron & Steel Works v. Bresnahan, 60 Mich. 332.

22. Whitaker v. Grummond, 68 Mich. 249-257.

23. Boynton v. Roe, 114 Mich. 401; Richardson v. Rogers, 45 Mich. 591; Covert v. Rogers, 38 Mich. 363; Town v. Bank of River Raisin, 2 Doug. (Mich.) 530.

24. Knight v. Mich. Female Seminary, 152 Mich. 616-618.

25. Brown v. Grand Rapids Parlor Furniture Co., 58 Fed. Rep. 286, 22 L. R. A. 817.

26. Kock v. Bostwick, 113 Mich. 302; Bank of Montreal v. Lumber Co., 90 Mich. 345; Turnbull v. Lumber Co., 55 Mich. 396; Kendall v. Bishop, 76 Mich. 634; Town v. Bank of River Raisin, 3 Doug. (Mich.) 530.

27. Webster v. Ypsilanti Canning Co., 140 Mich. 489-493; Bank

of Montreal v. Lumber Co., 90 Mich. 345-350; Crossette v. Jordan, 132 Mich. 78-82; Nappanee Canning Co. v. Reid, Murdock & Co., 159 Ind. 614, 59 L. R. A. 199; American Exchange Bank v. Ward, 111 Fed. Rep. 782, 55 L. R. A. 356; Schufeldt v. Smith, 131 Mo. 280; 29 L. R. A. 830; Sandford Fork & Tool Co. v. Howe, Brown & Co., 157 U. S. 312, 39 L. ed. 713. For an interesting Michigan case in which the opinion was written by Judge Taft, see Brown v. Grand Rapids Parlor Furniture Co., 58 Fed. 286, 22 L. R. A. 817. For a case sustaining the right of a majority of the board to pass a resolution authorizing the execution of notes to themselves for matured indebtedness, see Campau v. Detroit Driving Club, 135 Mich. 575-584.

28. Macklem v. Fales, 130 Mich. 66-71.

low the assets into the hands of such new corporation. The fact that the fraudulent transfer has been accomplished by means of valid mortgages foreclosed by judicial decree in due form, lends no validity to the transaction. For the purposes of enforcing restitution, equity will regard the old and the new corporation as identical²⁹.

§59. Officers.

An office in a private corporation is a vested right, of which the holder can not be deprived, except by due process of law³⁰. The right to exercise and enjoy an office in possession is not subject to collateral attack. The question can be raised only by a proceeding where the matter is directly in issue³¹. In equity, all officers of a corporation are regarded as trustees, and as such they may be called upon to account for their administration of the trust³². Where a corporate officer takes advantage of and abuses his power in such a way as to inflict loss, or perpetrate a fraud, upon the corporation, he must respond to the company for the injury, unless his act has been ratified³³. If corporate officers defraud stockholders for private benefit, the injured parties may elect to proceed against such officers either as individuals, or in their official capacity. The mere fact that the fraud of an officer has become, by adoption, the fraud of the corporation, does not relieve the officer of individual liability. He may not acquit himself by the excuse that he acted officially, because the commission of a fraud is no part of any officer's official duty. The corporation may make itself liable through participation in the fruits of the wrong doing, but this will not relieve the wrongdoer of liability³⁴. Where a corporate officer falsely holds himself out to an innocent third party as having certain authority, and such party relies upon the officer's repre-

29. *Sparrow v. E. Bement's Sons*, 142 Mich. 441-456.

30. *People v. Minong Mining Co.*, 33 Mich. 2.

31. *Jhons v. People*, 25 Mich. 499; *Druse v. Wheeler*, 22 Mich. 439.

32. In *Bay City Bridge Co. v. Van Etten*, 36 Mich. 209-211, Chief Justice Cooley made the following statement: "Officers of a corporation undoubtedly act in a fiduciary capacity, and may be called

to account in equity as trustees. But when they have ceased to be officers, and the only complaint made against them is of an appropriation of funds to their own use, and no discovery is sought, the reasons for seeking the aid of equity which commonly exist in cases of breach of trust are wholly wanting."

33. *First National Bank of Sturgis v. Reed*, 36 Mich. 262.

34. *Hempfling v. Burr*, 59 Mich. 294-296.

sentations, the officer binds himself³⁵. Corporate officers who, by abuse of power³⁶, or by want of reasonable diligence³⁷, cause loss to the corporation, are individually liable therefor. Good faith is no excuse for negligence. Honesty of intention will not exonerate a corporate officer for loss arising to the company through his failure to act as a reasonably prudent man might be expected to act under like circumstances³⁸.

§60. Powers of Officers.

Unlike the officers of public corporations, those in charge of private corporate enterprises are not bound by rigid rules demanding definite authority as the warrant for every official act. The equitable principles of estoppel and ratification are freely invoked when justice requires, and want of authority is rarely permitted to work a wrong to an innocent third party who has proceeded with reasonable care³⁹. Corporate officers, as well as other corporate agents, are governed by the general rules of agency⁴⁰. Fidelity to trust and adherence to authority are the two great controlling principles of this branch of the law.

§61. President.

The isolated fact that one is president of a corporation con-

35. *Solomon v. Penoyar*, 89 Mich. 11.

36. *First National Bank of Sturgis v. Reed*, 36 Mich. 262-267; but see *Morris v. Imperial Cap Co.*, 135 Mich. 476-478.

37. *Flynn v. Third National Bank*, 122 Mich. 642-644.

38. *Commercial Bank v. Chatfield*, 121 Mich. 641-646. In *Alpena Loan, etc., Association v. Denison*, 121 Mich. 159, it was held that, where officers charged with the duty of auditing books found such books correct, they were not liable through a failure to discover that the secretary was embezzling money of the company by means of secret books.

39. In the case of *Preston National Bank v. Geo. T. Smith Midglings Purifier Co.*, 84 Mich. 364-384, Justice Cahill used the following language: "The strict limitations that govern public corpora-

tions and their officers are not to be applied with the same strictness to private business corporations. There are no questions of public interest to be affected by the exercise of corporate power by one agent rather than another in a private corporation. No questions of public policy are involved. The concern is purely private, affecting no one but the owners. What the owners consent to, expressly or permissively, they ought not to be allowed afterwards to deny."

40. Justice Campbell, in *Adams Mining Co. v. Senter*, 26 Mich. 73-76, said: "There is no reason, and can be no legal principle, which will put the agent of a corporation on any different footing than the agent of an individual, in regard to the same business. A general agent needs no instructions within the range of his du-

fers no implied power to bind the corporation⁴¹. But where the president is engaged in active management of the corporate business he will be presumed to have such implied powers as may be necessary for that purpose⁴². The unauthorized acts of the president, as well as of any other officer or agent of the corporation, may become binding by estoppel where the corporation has held him out as having power, or by ratification where the corporation has received and retains the benefits of his transactions⁴³. It would seem almost frivolous to here state the obvious fact that two or more unauthorized agents, acting together, have no greater power to bind the corporation than any one of them would possess if he acted alone. Yet that mere numbers operate as a substitute for authority has been earnestly, though unsuccessfully, argued⁴⁴.

Where the president of a corporation is its chief executive officer, he has implied power to employ counsel and to answer in suits against the corporation, and, in case of need, to execute appeal bonds in the corporate name⁴⁵. He may agree to an arbitration⁴⁶. He may also exercise much broader powers where his control of corporate affairs has been made practically absolute through long continued acquiescence by the board of directors⁴⁷. Failure to oppose may be construed as assent. But this implied approval is not extended to cases where no rights

ties, and any limitations on his usual powers would not bind others dealing with him and not warned of the restrictions."

41. *Gould v. W. J. Gould Co.*, 134 Mich. 515-516.

42. *Ceeder v. Lumber Co.*, 86 Mich. 541. In this case Justice McGrath said: "A president of a manufacturing company, who is active in the conduct and management of the business, must be presumed to have all the power of any agent exercising a like control or management, and to have authority to do what is usually and ordinarily done by such agents or managers." *Sarmiento v. Boat & Oar Co.*, 105 Mich. 300-302; *Preston National Bank v. Purifier Co.*, 84 Mich. 364; *Lansing Turnverein Society v. Carter*, 71 Mich. 608-611; *Hirschmann v. Railroad Co.*, 97 Mich. 384; *Gould v. W. J.*

Gould & Co., 134 Mich. 515-516.

43. *Eureka Iron & Steel Works v. Bresnahan*, 60 Mich. 332; *Michigan Central R. Co. v. Chicago, K. & S. Ry. Co.*, 132 Mich. 324.

44. *Gould v. W. J. Gould & Co.*, 134 Mich. 515-516.

45. *Sarmiento v. Boat & Car Co.*, 105 Mich. 300.

46. *Fitch v. Constantine Hydraulic Co.*, 44 Mich. 74.

47. *Preston National Bank v. Purifier*, 84 Mich. 364. In this case a president whose power by by-law was to "have general supervision over the property and affairs of the corporation," and who for five years assumed almost exclusive charge of the corporate business, was held to have implied power to bind the corporation by an assignment of accounts amounting to \$150,000, as collateral to corporate indebtedness.

of third parties have been founded upon it⁴⁸. The president of a corporation would probably have no implied power to confess judgment against it⁴⁹. Corporate notes given by the president of a company to take up private obligations are *prima facie* unauthorized, and are accepted at peril⁵⁰. If the president of a corporation has implied power to make an agreement, he has implied power to modify the same agreement⁵¹. And if he has power to execute an instrument, he may execute it anywhere⁵². A corporate instrument, executed with the consent of all of the stockholders and directors, is valid, even though not formally authorized⁵³.

§62. Vice-President.

The vice-president ordinarily may exercise all of the official powers of the president during the latter's absence or disability. When he acts in the stead of the president, he is restricted by the same limitations that are applicable to the president's authority. It happens, not infrequently, that the vice-president is the managing officer of the company. His powers as manager are cumulative with those possessed by him as vice-president. He has such implied power as may be necessary to carry on the business which has been placed in his control⁵⁴.

§63. Secretary.

The secretary is the official keeper of the records of corporate meetings. Apart from this function, his powers are largely, if not wholly, dependent upon delegations of authority embodied in the by-laws, resolutions of the board, the terms of his employment, or the settled policy of the company. Like other officers, he has no implied power to make extraordinary contracts⁵⁵, nor has he, by the mere fact of his office, authority to execute commercial paper in the corporate name⁵⁶.

48. Eureka Iron & Steel Works v. Bresnahan, 60 Mich. 332; Kent County Agricultural Society v. Ide, 128 Mich. 423-426.

49. Jones v. Avery, 50 Mich. 326-328; Stevens v. Carp River Iron Co., 57 Mich. 427.

50. McLellan v. Detroit File Works, 56 Mich. 579; New York Iron Mine v. National Bank, 39 Mich. 644.

51. White v. Taylor, 113 Mich. 543.

52. Gray v. Waldron, 101 Mich.

612.

53. Kalamazoo Spring Co. v. Winans, 106 Mich. 193; Eureka Iron & Steel Works v. Bresnahan, 60 Mich. 332.

54. Drew v. Billings-Drew Co., 132 Mich. 65-68.

55. Laird v. Mich. Lubricator Co., 153 Mich. 52-55. In this case a secretary-treasurer had made a contract employing a clerk for three years. Held extraordinary and void.

56. Gould v. W. J. Gould & Co.,

§64. Treasurer.

Apart from his duties to safely keep and account for the funds of the corporation, the implied powers of the treasurer are limited. He has power to receive and receipt for moneys belonging to the corporation⁵⁷. But he has no implied authority to borrow money in the corporate name and issue its notes therefor⁵⁸; nor has he implied authority to confess judgment in behalf of the corporation⁵⁹; nor to make extraordinary contracts⁶⁰; nor to issue written admissions of corporate indebtedness⁶¹. It has been held that the treasurer's office implies that its incumbent has authority to endorse for transfer stock certificates belonging to the company, and third parties are protected in relying upon such apparent authority, in the absence of circumstances or notice indicating a want of power⁶². Authority to execute negotiable instruments in the name of a corporation may be conferred upon the treasurer by parol⁶³.

§65. General Manager.

The general manager of a corporation may have as much or as little power as the charter, by-laws, and action of the board have granted him. He is a mere agent, and the rules of agency, hereafter discussed, will be found controlling upon his authority in most instances. It has been held in this State, that a general manager has implied authority to transact all of the ordinary business of the corporation⁶⁴; that he has power to make reasonable contracts for the employment of labor⁶⁵; that he has like power to sell personal property belonging to the corporation⁶⁶,

134 Mich. 515.

57. *People v. Carter*, 122 Mich. 668.

58. *Craft v. South Boston R. Co.*, 150 Mass. 207, 5 L. R. A. 641.

59. *Stevens v. Carp River Iron Co.*, 57 Mich. 427; *Jones v. Avery*, 50 Mich. 326-328.

60. *Laird v. Mich. Lubricator*, 153 Mich. 52.

61. *Kalamazoo Novelty Mfg. Co. v. McAlister*, 36 Mich. 327.

62. *Walker v. Detroit Transit Ry. Co.*, 47 Mich. 338-350.

63. *Odd Fellows v. First National Bank of Sturgis*, 42 Mich. 461.

64. *Adams Mining Co. v. Senter*, 26 Mich. 73.

65. *Ceeder v. H. M. Loud Lumber Co.*, 86 Mich. 541. In *Gamacho v. Engraving Co.*, 2 N. Y. Ap. 369, it was said, "No presumption of law can be indulged in that, because a person acts as such manager, he has the power to bind his principal to contracts of an extraordinary nature and of such a character as would involve the corporation in enormous obligations and for long periods of time." Cited with approval in *Laird v. Mich. Lubricator Co.*, 153 Mich. 52-55; *Nephew v. Railroad Co.*, 128 Mich. 602.

66. *Scudder v. Anderson*, 54 Mich. 122; *Adams Mining Co. v. Senter*, 26 Mich. 73.

and to receive and receipt for money due the company⁶⁷; but it has been stated that he has no implied power to issue notes in the name of the corporation⁶⁸. Of course such paper might be sustained by estoppels.

§66. Corporation Counsel.

The implied power of an attorney for a corporation is limited to such acts as are customary and necessary in the adjustment of claims, the management of litigation, the preparation of documents and the giving of counsel. An attorney has no implied power to bind the corporation by any extraordinary contract⁶⁹. Thus, as an incident of settling a claim, an attorney would not have implied power to bind a corporation to furnish the claimant with employment⁷⁰. But, necessarily, such a contract would be valid if made with express authority, or if subsequently ratified⁷¹.

§67. Joinder of Offices.

Where certain differing powers are vested in the several offices of a corporation, and one person is elected to two or more of such offices, all of the powers incident to the several offices to which he has been chosen become vested in him⁷². The fact that an agent of a corporation is also an officer, does not limit his powers as an agent. His authority as agent and his authority as an officer are cumulative⁷³.

§68. General Powers of Officers and Agents.

Corporate officers are upon practically the same footing as other corporate agents. The implied powers of a corporate agent, regardless of official title, are defined by the general principles of agency. The mere fact that one happens to be an officer or agent of a corporation does not render the corporation liable for acts done outside the scope of his authority⁷⁴. The

67. *Whitaker v. Kilroy*, 70 Mich. 635.

68. *New York Iron Mine v. National Bank*, 39 Mich. 644.

69. *Nephew v. Michigan Central R. Co.*, 128 Mich. 599-602.

70. *Nephew v. Michigan Central R. Co.* (Id.)

71. *Brighton v. Lake Shore & M. S. R. Co.*, 103 Mich. 420-423;

Maxson v. Mich. Central R. Co., 117 Mich. 218-223.

72. *Preston National Bank v. Purifier Co.*, 84 Mich. 364-381.

73. *Preston National Bank v. Purifier Co.*, (Id.).

74. *Preston v. Marquette County Savings Bank*, 122 Mich. 696; *Hartford Mining Co. v. Cambria Mining Co.*, 80 Mich. 491-495;

authority of an agent can not be established by proof of the agent's statements⁷⁵. One dealing with a corporate agent should ascertain the agent's authority from its source⁷⁶. Where a corporation has entrusted *entire management* of its business to a single officer or agent, it will not be permitted, as against the vested rights of third parties, to deny the agent's authority to do any act which the corporation might have authorized him to do⁷⁷. But one who deals with a corporate agent, with notice of the limitations upon the agent's authority, can not hold the corporation liable in the absence of ratification, for acts transcending such authority⁷⁸. Notice will be presumed from facts, brought to the attention of the third party, sufficient to put him upon inquiry⁷⁹.

A general agent has power to bind the corporation upon all matters falling within the usual scope of his duties, and within

Lockwood v. Boom Co., 42 Mich. 539; Delta Lumber Co. v. Williams, 73 Mich. 86-92; Turner v. Phoenix Ins. Co., 55 Mich. 236-242; Richardson v. Rogers, 45 Mich. 591-596; Rice v. Peninsular Club, 52 Mich. 87; Bond v. Pontiac, Oxford & P. A. R. Co., 62 Mich. 643; Shavaliar v. Grand Rapids B. & L. Co., 128 Mich. 230-236. In Lockwood v. Thunder Bay River Boom Co., 42 Mich. 536-539, Justice Campbell said: "A corporation can not be held to have contracted, unless by such agents, or officers, as have express or implied authority."

75. Bond v. Pontiac, Oxford & P. A. R. Co., 643-649.

76. In Delta Lumber Co. v. Williams, 73 Mich. 86-91, Justice Champlin used the following language: "Corporations are bound by the acts of their agents to the same extent and under the same circumstances as natural persons. Agents may have as much or as little power as their principals see fit to give them, and one dealing with an agent is bound to inquire into the extent of his authority, not from the agent, in the absence of a written evidence of authority, but from the principal, if accessible; and dealings or engagements of the agent beyond the scope of

his authority would not bind the principal."

77. Davenport v. Stone, 104 Mich. 512-524; Wing v. Commercial, etc., Bank, 103 Mich. 565; Creeder v. H. M. Loud Lumber Co., 86 Mich. 541-544; Eureka Iron & Steel Works v. Bresnahan, 60 Mich. 332; Whitaker v. Kilroy, 70 Mich. 635; Adams Mining Co. v. Senter, 26 Mich. 73-76; Walker v. Detroit Transit R. Co., 47 Mich. 348; Ball v. Ridge Copper Co., 118 Mich. 7-18. Thus where an officer has power to employ an agent, such officer has implied power to fix the agent's compensation. Duford v. Parliament, etc., 152 Mich. 151-154.

78. Berlin v. Belle Isle Scenic Ry Co., 141 Mich. 646; Hallenbeck v. Casket Co., 117 Mich. 680-683.

79. Where the agent of one corporation orders goods to be shipped to, and in the name of, another corporation, the vendor is put upon inquiry as to the agent's authority. Thus an order, "Ship the gear and pinion to the Allegan Paper Co., Allegan, Mich. (Signed) Niles Paper Mill Co., A. E. Jacks, Secy.," was held to cast upon the vendor the duty of ascertaining Jack's authority. Stillwell-Bierce & Smith Vaile Co. v. Niles Paper Mill Co., 115 Mich. 35.

this field third parties who have knowledge of his appointment, and no actual or constructive notice of his restrictions, are not put upon inquiry as to his authority, but are protected in dealing with him upon the assumption that he has power to carry on the work placed in his charge by his principal⁸⁰.

Where a corporation has local branches in charge of local agents, such agents have implied power to transact such business as falls within the scope of their apparent authority. Within these bounds the public is protected in dealing with such agents without inquiry⁸¹. No officer or agent of a corporation has implied power to bind the corporation by extraordinary contracts imposing upon the corporation obligations unusual in terms, amount or duration. Such a contract can be sustained

80. *Grand Rapids Elec. Co. v. Walsh Mfg. Co.*, 142 Mich. 4; *Austrian & Co. v. Springer*, 94 Mich. 343; *Allis v. Voight*, 90 Mich. 123; *Fox v. Spring Lake Iron Co.*, 89 Mich. 387-399; *English v. Ayer*, 79 Mich. 516; *Drew v. Billings-Drew Co.*, 132 Mich. 65-68; *Constantine v. Beet Sugar Co.*, 132 Mich. 480-488; *Whitaker v. Kilroy*, 70 Mich. 635; *Hirschmann v. Iron Range, etc., R. Co.*, 97 Mich. 384; *Creeder v. H. M. Loud & Sons Lumber Co.*, 86 Mich. 541; *Cadillac State Bank v. Cadillac Stave & Heading Co.*, 129 Mich. 15; *Michigan Slate Co. v. Iron Range, etc., R. Co.*, 101 Mich. 14; *Conely v. Collins* 119 Mich. 519-521; *Preston National Bank v. Purifier Co.*, 84 Mich. 364; *Hallenbeck v. Powers & Walker Casket Co.*, 117 Mich. 680-683; *Davenport v. Stone*, 104 Mich. 521; *Wing v. Commercial, etc., Bank*, 103 Mich. 565-579. In *Whitaker v. Kilroy*, 70 Mich. 635-638, Justice Cambelli said: "We think that persons dealing with such a corporation * * * have a right to get their information from the person whom the corporation has put in charge, and cannot be required to go elsewhere, and that contracts so made are valid contracts when relating to the ordinary concerns of such business. And if persons are not sustained in contracting with such superintendents they can never be safe. They have no means of knowledge except inquiry some-

where, and the person put by the corporation in open charge of the business must have power, as to third persons, to represent it." The novation of a debt due from a corporation is within the power of a general agent who has authority to pay the debts of the company.—*Mulcrone v. American Lumber Co.*, 55 Mich. 622-626. In *Constantine v. Beet Sugar Co.*, 132 Mich. 488, an instructive example is given of the length to which courts will go to sustain contracts made by corporate agents. A written contract for the raising and sale of the crop of sugar beets contained the following clause: "When this contract shall be signed, and a copy thereof delivered to each party, no agent of said second party (the corporation) has any authority to change or alter the terms and conditions thereof." Long after the contract had been signed and delivered, the agent of the corporation made a parol agreement with the growers, guaranteeing them against loss in their undertaking. No express authority was shown in the agent to do this. Held, that it was within his implied authority and that the corporation was bound.

81. *Canadian Bank of Commerce v. Coumbe*, 47 Mich. 358-364. See also *Westchester Fire Ins. Co. v. Earle*, 33 Mich. 143; *Sanford v. Nyman*, 23 Mich. 326; *Russel v. Sweezey*, 22 Mich. 235; *Peoria M. & F. Ins. Co. v. Hall*, 12 Mich. 202.

only by proof of express authority or clear ratification⁸². As a modification of the proposition that an officer has no implied power to make extraordinary contracts, it may be safely stated, that he may make binding contracts, both ordinary and extraordinary, where the entire control and management of the corporation has been expressly, or by long established usage, delegated to him. This situation sometimes arises when the stockholders and directors hold no meetings, exercise no control, and, to all intents and purposes, abandon the business to the management of a single officer who acts. Under such circumstances, the acting officer has become, in effect, the managing board. By long acquiescence in his absolute control, the presumption arises that such control is exercised by unanimous assent. Having clothed such officer with apparent power to represent the corporation in all things, the officers and members by whose assent he has acted will not be heard to deny the validity of his acts. Extraordinary powers are implied from these extraordinary conditions⁸³. The authority which an officer

82. *Laird v. Mich. Lubricator Co.*, 153 Mich. 52; *Nephew v. Mich. Cent. R. R.*, 128 Mich. 599; *Maxson v. Mich. Cent. R. R.*, 117 Mich. 218; *Eakins v. White Bronze Co.*, 75 Mich. 568-571. The chief engineer of a railroad corporation has no implied power to select the locations and let the contracts for construction of a large number of depots to be built along the line. Such extraordinary obligations cannot be imposed upon the company, except by clear authority. *Bond v. Pontiac, Oxford & P. A. R. Co.*, 62 Mich. 643-649. In the absence of express authority, the chief surgeon of a corporation has no power to bind the company by the employment of an assistant. *Burke v. Chicago & West Mich. Ry. Co.*, 114 Mich. 685-687. But one who has the entire charge and supervision of a corporation may make it liable upon a contract with a physician for the services of the physician and a nurse, rendered to an injured employee. *Hodges v. Detroit etc., Power Co.*, 109 Mich. 547-551. So also it has been held that a railway superintendent has implied authority to employ a physician, and that express authority need not be shown.

Marquette etc., R. Co. v. Taft, 28 Mich. 289. In *Knickerbocker v. Wilcox*, 83 Mich. 200, assumpsit was brought against defendant Wilcox in his individual capacity, upon the following undertaking:

"Three River National Bank.
"Three Rivers, Mich., Oct. 11, 1886.
"W. H. Knickerbocker, Cashier,
"Elkhart, Indiana.

"Dear Sir: A replevin suit has been commenced in your county by Bellman & Handy, of this place, against Haomi Warner, of your place. They (B. & H.), being non-residents, are required to give bonds. They are good customers of ours, and if you will sign said bond we will stand between you and all harm.

"L. T. Wilcox, Cashier."

National banks having no authority to enter into such agreements, it was held that the cashier, although signing officially, made himself individually liable.

83. In *Conely v. Collins*, 119 Mich. 519-520, it appeared that no meetings had been held, and that one, Hathaway, had been left in full control of the corporate business. It was held that a conveyance in trust, executed by him, covering all of the

or agent is customarily permitted to exercise may be shown for the purpose of proving the scope of his recognized powers. Within the lines of these powers—powers exercised for a considerable length of time, with the knowledge and without the protest of the directorate—he binds the corporation⁸⁴.

§69. Ratification.

What a corporation might have authorized, it may ratify⁸⁵. It is a familiar principle that, when a corporation receives and retains benefits conferred by an unauthorized act, such retention ratifies the act. The corporation is estopped to repudiate the burdens of an act while retaining its benefits⁸⁶. Ratification of the act of an officer or agent can not be extended to matters not embraced within the scope of the act ratified⁸⁷. But when a contract is ratified, it is ratified as a whole. The corporation can not adopt that which is beneficial and reject that which is burdensome⁸⁸. An unauthorized act, performed ostensibly for the corporation by its agent, may be effectively ratified by another agent of the same corporation, provided the ratifying agent himself had authority to perform the act ratified⁸⁹. A corporate agent may ratify the unauthorized acts of a stranger, provided the agent has general power to appoint agents for the performance of like acts⁹⁰. But where the power to appoint such

property of the corporation was not void for want of authority to execute it, although it was held void for another reason, namely, that it amounted to a common law assignment creating preferences. In *Preston National Bank v. Purifier Co.*, 84 Mich. 364, Smith had been left in complete control of the affairs of the company for a long period of time. Without express authority, he assigned accounts to a bank as collateral to indebtedness. The assignment was sustained. See also *Whitney v. Foster*, 117 Mich. 643; *Davenport v. Stone*, 104 Mich. 521; *Michigan Slate Co. v. Iron Range etc., R Co.*, 101 Mich. 14.

84. *Wing v. Commercial, etc., Bank*, 103 Mich. 565; *Chamberlain v. Detroit Stove Works*, 103 Mich. 124. It is a general rule that the agent of a corporation has no implied authority to make notes in the corporate name. By usage, acqui-

esced in by the corporation with full knowledge, and relied upon by third parties, the corporation may be estopped to deny the agent's authority. But the fact that such usage had existed, would avail nothing to one who had no knowledge of it, and who, therefore, could not have relied upon the fact. *New York Iron Mine v. Negaunee Bank*, 39 Mich. 644-651.

85. *McLaughlin v. Detroit & Milwaukee R. Co.*, 8 Mich. 99-103.

86. *Clement Bane & Co. v. Clothing Co.*, 110 Mich. 458-465; *Taymouth v. Koehler*, 35 Mich. 21-25.

87. *Gordon v. Constantine Hydraulic Co.*, 117 Mich. 620-626.

88. *Peninsular Bank v. Hammer*, 14 Mich. 207-214.

89. *Cascarella v. National Grocer Co.*, 151 Mich. 15-19.

90. *Ironwood Store Co. v. Harrison*, 75 Mich. 197-203.

agents is absent, the power to ratify the acts of a stranger does not exist⁹¹.

§70. Agents in Adverse Interests.

Like other agents, corporate representatives are held to a high order of good faith. They may not gain secret profit for themselves at the expense of the corporation⁹². A corporate officer or agent can not act when his private interest conflicts with his duty to his principal⁹³. A corporate agent can not, in the absence of ratification hold the company upon a contract made by himself, as agent, for his own interest as an individual⁹⁴. If he does this, however, the corporation is the only party injured, and hence is the only one who can complain⁹⁵. An agent may lawfully represent two different companies adversely interested in the same transaction, provided his conduct is open, fair and honest⁹⁶.

§71. Fraud or Torts of Agents.

Like a natural person, a corporation is liable, and may be held to respond in damages, for the fraud of its officers and agents, perpetrated in the course of their employment and within the scope of their apparent authority⁹⁷. Upon the same principle, corporations are held liable for the torts of their agents⁹⁸, even in instances where malice is an essential element of the wrongful act⁹⁹. But a mere stockholder is not in any sense

91. *Ironwood Store Co. v. Harrison*, (Id.)

92. Where a director bought land in his own name with corporate funds, it was held that he acquired the property as a trustee for the corporation. *Michigan Air Line Ry. v. Mellen*, 44 Mich. 321-323.

93. *Gallery v. National Exchange Bank*, 41 Mich. 169-172; *Stevenson v. Bay City*, 26 Mich. 46.

94. "Fidelity in the agent is what is aimed at, and as a means of securing it, the law will not permit the agent to place himself in a situation in which he may be tempted by his private interest to disregard that of his principal."—Justice Manning in *People v. Township*, 11 Mich. 225; cited in *Flint & P. M. Ry. Co. v. Dewey*, 14 Mich. 477-487. But rat-

ification cures the defect.—*Richardson v. Welch*, 47 Mich. 309-311.

95. *Richardson v. Welch*, 47 Mich. 309-312.

96. In *Aldine Mfg. Co. v. Phillips*, 129 Mich. 240-243, one person was an officer and agent of two companies, and as selling agent for the one and purchasing agent for the other, sold for one and bought for the other the same goods. He acted openly and with the knowledge of the directors of both companies. The transaction was sustained. See also *Adams Mining Co. v. Senter*, 26 Mich. 76.

97. *Lasier v. Appleton Land & Iron Co.*, 130 Mich. 588-590.

98. *Bath v. Caton*, 37 Mich. 199.

99. *Bacon v. Michigan Central R. Co.*, 55 Mich. 224.

an agent of the corporation, and the malice of a stockholder can not be imputed to the corporation, except where it is shown that the corporation acted upon the stockholder's suggestion and for the purpose of assisting him in carrying out his malicious design¹⁰⁰.

§72. Statements of Officers and Agents.

The statements, representations and admissions of officers and agents, made within the scope of their authority, and with reference to the business which they are employed to transact are deemed to be the statements, representations and admissions of the corporation itself, and may be given in evidence against it¹⁰¹. The corporation is not bound, however, by the admissions of an officer or agent made outside the scope of his authority and having no connection with his duties¹⁰². An agent's expression of private opinion can in no way bind the corporation¹⁰³.

§73. Knowledge of Officers and Agents.

The corporation is charged with notice of facts brought to the attention of its officers and agents within the scope of, and pertaining to, the duties of their employment¹⁰⁴. But the mere fact that a corporate officer or agent gains information in which the corporation has an interest, but in which he has no interest

100. *Randall v. Evening News Ass'n*, 97 Mich. 136.

101. *Allington & Curtis Co. v. Reduction Co.*, 133 Mich. 427-435; *Kimball & Austin Mfg. Co. v. Vroman*, 35 Mich. 310.

102. *Peek v. Detroit Novelty Works*, 29 Mich. 313; *Allington & Curtis Co. v. Reduction Co.*, 133 Mich. 427-435; *Beunk v. Valley City Desk Co.*, 128 Mich. 562-567; *Ward's C. & P. L. Co. v. Elkins*, 34 Mich. 439-442. In the case last cited, the statements of a steamboat clerk, not shown to have been made in relation to matters within the scope of his duty, were held inadmissible. In *Beunk v. Valley City Desk Co. (Id.)*, the manager of a corporation made statements in a casual conversation, unconnected with any of his official duties. Held, error to introduce these statements in evidence.

103. *Michigan Central R. Co. v.*

Edwards, 33 Mich. 16.

104. *Zeigler v. Valley Coal Co.*, 150 Mich. 82-85. In this case the principle was carried to the extent of holding a resulting corporation bound by the knowledge of one who, acting in behalf of the incorporators, and prior to incorporation, took defective title to property which was afterwards transferred to the company. See also *Humphrey v. Eddy Transportation Co.*, 115 Mich. 420-424; *Columbus Sewer Pipe Co. v. Ganser*, 58 Mich. 385; *Simmons Creek Coal Co. v. Doran*, 142 U. S. 417; 35 L. ed. 1063. Where a corporation has knowledge of the existence of a condition that implies a pre-existing agreement, it is held to have constructive notice of the terms of the agreement.—*Michigan Central R. Co. v. Chicago K. & S. Ry. Co.*, 132 Mich. 324-330.

because such information is irrelevant to the branch of corporate duties in which he is employed, does not charge the corporation with notice¹⁰⁵. Knowledge of an agent concerning isolated and occasional transactions does not remain the knowledge of the corporation so as to make it chargeable with like knowledge in future transactions after the agent has been discharged¹⁰⁶. So the knowledge of an agent, gained in a transaction, and afterwards forgotten by him, should not be held to be the knowledge of the corporation in a subsequent, independent transaction, in the absence of a clearly defined duty to remember¹⁰⁷. There is no reason why a corporation should be held to have a better memory than an individual, and want of recollection on its part will not be negligence when want of recollection by a natural person would not be. When the interest of an officer or agent is directly antagonistic to the interest of the corporation in a given transaction, the knowledge of such representative as to such transaction will not be deemed the knowledge of the corporation¹⁰⁸.

§74. Compensation.

The services of directors are presumptively gratuitous¹⁰⁹. Where a director performs either a general or a special service, he is presumed to be acting merely in the course of his duties as a director, and is entitled to no compensation in the absence of an agreement, express or clearly implied, that such services shall be compensated¹¹⁰. But when, under all of the circum-

105. *Shaw v. Clark*, 49 Mich. 384.

106. *Grand Western Ry. v. Wheeler*, 20 Mich. 419.

107. *Grand Western Ry. v. Wheeler*, (Id.)

108. *State Savings Bank v. Montgomery*, 126 Mich. 327-333; *People's Savings Bank v. Hine*, 131 Mich. 181-183.

109. *Eakins v. White Bronze Co.*, 75 Mich. 568-571; *Cicotte v. St. Anne Church*, 60 Mich. 552; *St. Jude's Church v. Van Denberg*, 31 Mich. 287; *Ten Eyck v. Pontiac Oxford & P. A. R. Co.*, 74 Mich. 226; *3 L. R. A.* 378; *Notley v. State Bank*, 154 Mich. 676; *Henry v. Michigan Sanitarium*, 147 Mich. 142-146; *Whittemore v. Scientific Inst.*, 128 Mich. 518. In *Cicotte v. St. Anne's*

Church, it was held, that the following requests to charge should have been given: "If the performance of the work was voluntary, and both sides supposed the service was given spontaneously, from a desire to promote a cause the plaintiff had at heart, no agreement to pay can be implied. If the work was done under circumstances justifying the belief that no charge was intended, there is no liability to pay. If the relations of the parties, the nature of the service, and all the pertinent facts, show that the plaintiff was not working for money, and that the church did not understand that pay was to be exacted, none can be demanded."

110. *Henry v. Michigan Sanitarium*, 147 Mich. 142-146. But when a

stances, the representatives of the corporation, as reasonable men, must have known, or should have known, that a director expected pay for his services, and that he was not rendering such services gratuitously, there is no presumption that the services are gratuitous, but, on the contrary, an agreement to pay for such service is implied¹¹¹. Neglect of the directors to fix salaries does not deprive an officer of his right to compensation for services rendered. If the services were performed with the understanding, express or implied, that they were to be remunerated, the officer may recover their reasonable worth¹¹². A corporation is, of course, bound upon its contracts for services to the same extent as a natural person. It is to be remembered, however, that the trust relations incident to corporate management, subject all of the company's contracts for employment to the test of good faith. Thus, it has been held that, where one who controls a corporation causes directors of his own selection to vote him an unconscionable salary, a court of equity may, at the instance of a minority holder, compel him to disgorge the excess assets thus converted¹¹³.

committee is appointed to perform a service that requires the employment of an assistant, implied power is conferred upon the committee to bind the corporation for the compensation of such assistant.—*Star Line of Steamers v. Van Vliet*, 43 Mich. 364-367. In *Henry v. Michigan Sanitarium*, Justice Montgomery said: "While the dealings of a director or trustee of a corporation with the board of which he is a member are closely scrutinized, there is no rule which, in the case of any ordinary corporation, precludes such trustee from contracting to perform outside service for which he is to be paid. But, even in cases where there is no restriction placed upon the right to compensation, it is a well-understood

rule that a director or trustee who claims compensation for services must make it appear, not only that such services fall outside the scope of his regular duties, but also that they were performed under circumstances sufficient to show that it was understood by the corporate officers, as well as himself, that the services were to be paid for by the corporation."

111. *Dodge v. Lansing etc. Traction Co.*, 152 Mich. 103; *Ruttle v. What Cheer Mining Co.*, 153 Mich. 300.

112. *Dodge v. Lansing etc. Traction Co.*, 152 Mich. 100-103; *Rogers v. Railroad Co.*, 22 Minn. 25.

113. *Mirer v. Belle Isle Ice Co.*, 93 Mich. 97-117.

CHAPTER VIII.
STOCK—ITS SALE, ISSUE AND TRANSFER.

- §75. Nature of Stock.
- §76. Stocks are "Goods."
- §77. Certificates of Stock.
- §78. Classes of Stock.
- §79. Price of Shares.
- §80. Subscriptions.
- §81. False Representations and Fraud.
- §82. Remedies for Fraud.
- §83. Transfers.
- §84. Calls.
- §85. Corporate Liens on Stock.
- §86. Pledges of Stock.
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§75. Nature of Stock.

Stock, as the term is here used, denotes the interest of the members of a business corporation in the property and control of the company. For convenience stock is divided into shares of uniform face value, and these shares of stock are evidenced by certificates. Stock certificates are merely authenticated symbols of title and interest. The interest may exist as fully without them as with them. One may transfer his interest in a corporation without transferring his certificate, but this, of course, would be irregular, and might give rise to serious difficulties before recognition of the transfer could be obtained from the company¹. The ownership of an interest in a corporation, even though no certificate of stock may have been issued, is a vested right which can not be defeated, except by voluntary act or by due process of law².

§76. Stocks are "Goods".

Shares of stock in an incorporated company are "goods" within the meaning of the Michigan statute of frauds³. It fol-

1. May v. McQuillan, 129 Mich. 392-396. Minn. Mining Co., 23 Mich. 144-163.

2. Kobogum v. Jackson Iron Co., 76 Mich. 498-505; People v. Minong Mining Co., 33 Mich. 2; Westcott v. Sprague v. Hosie, 15 D. L. N. 847-849; White v. Taylor, 113 Mich. 543.

lows, that where the price of the stock contracted to be sold exceeds \$50, in the absence of delivery or payment, in whole or in part, the contract must be evidenced by "some note or memorandum in writing of the bargain made, signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized." Otherwise it will be unenforceable⁴. So, where a contract for the purchase of shares is not to be performed within one year, it is within the inhibition of the statute of frauds and is void, unless reduced to writing⁵. The agreement being that one party contracts to sell and the other contracts to buy certain shares, it will be a nullity for want of mutuality unless signed by both parties⁶. The policy of the law in this State being to regard shares of stock as chattels, rather than as mere choses in action⁷, trover lies for conversion of shares of stock, as well as for conversion of the mere certificates evidencing the shares⁸.

§77. Certificates of Stock.

Possession of a certificate of stock, regular upon its face, and issued in the name of the holder, is *prima facie* evidence of title. So a certificate, endorsed in full or in blank passes title to the transferee by delivery⁹. Except as against liens created by statutes in favor of the corporation, stock certificates are prac-

4. C. L. 1897, Sec. 9516.

5. C. L. 1897, Sec. 9515; *McIlroy v. Richards*, 148 Mich. 694.

6. *McIlroy v. Richards* (Id.); *Wilkinson v. Heavenrich*, 58 Mich. 574.

7. In *Sprague v. Hosie* (ante), Justice Ostrander said: "It must be admitted that at the common law shares of an incorporated company occupy much the same position as promissory notes and other mere choses in action. * * * Such shares have, however, come to be subject to common barter and sale, and are usually evidenced by certificates which, in the absence of statutory provisions, operate by assignment and delivery to transfer title to the shares as between the parties. They are, in this State, by statute, subject to levy and sale on execution. In many other respects they are treated as something more

than mere choses in action."

8. In *Daggett v. Davis*, 53 Mich. 35-37, Chief Justice Cooley said: "We see no reason why, if the shares are converted by means of a wrongful use of the certificate, the owner, in suing, may not count upon the conversion of either. The shares are the property converted, but the certificate itself is also property; standing as it does as the representative of the shares, and as its conversion may take the shares from the owner, it seems to be as proper to count upon its conversion as upon the conversion of money or any chattel." See also *Smith v. Thompson*, 94 Mich. 381-385; *McDonald v. McKinnon*, 92 Mich. 254; *Morton v. Preston*, 18 Mich. 60.

9. *Foster v. Row*, 120 Mich. 1-16; *McLean v. Medicine Co.*, 96 Mich. 479; *May v. Cleland*, 117 Mich. 45-47.

tically upon the basis of commercial paper. One who, without knowledge of defenses, takes apparently regular certificates by purchase or in pledge from the *prima facie* owner thereof, and gives value therefor, stands in the position of a *bona fide* holder. His rights are superior to outstanding equities¹⁰. Recitals in stock certificates are binding as between the corporation and its stockholders¹¹, but not as between the original subscribers and the creditors of the corporation¹². A *bona fide* holder of stock issued as "fully paid and non-assessable" is not liable for calls, either to the corporation or to its creditors.

§78. Classes of Stock.

All stock may be divided into two general classes—common stock and preferred stock. Common stock consists of such shares as enjoy no special contractual advantages as between their holder and the company. Preferred stock consists of such shares as enjoy such special advantages. The preference usually consists in the right to receive a certain fixed dividend out of the earnings of the company, before anything may be paid to the holders of the common stock.

Preferred stock may be cumulative or non-cumulative. It is said to be cumulative when the contract between the corporation and the shareholder is, that passed dividends shall accumulate, and shall be eventually paid in priority to any dividend upon the general, or common, stock. When the arrangement is that a dividend once passed shall remain permanently passed, or, in other words, that unpaid dividends shall not accumulate, the stock is called "non-cumulative." The preference accorded to preferential shares, except when regulated by statute, is purely a matter of contract, and may be in forms as various as the needs of the company may require, or as the skill and ingenuity of counsel may suggest. Such shares are sometimes made "fully participating." That is to say, a certain fixed dividend must first be paid upon the preferred stock; then a like dividend may

10. *Walker v. Detroit Transit Ry. Co.*, 47 Mich. 338-347. In this case Chief Justice Graves made the following statement: "If the rightful owner has invested another with the usual evidence of title, or an apparent authority to dispose of the stock, he will be estopped from making any claim against an innocent

purchaser dealing upon the faith of such apparent ownership or right of disposal."

11. *Upton v. Tribilcock*, 91 U. S. 45, 23 L. ed. 203.

12. *Young v. Erie Iron Co.*, 65 Mich. 111-126; *Sanger v. Upton*, 91 U. S. 56, 23 L. ed. 220-222.

be paid upon the common stock, and thereafter all shares, both common and preferred, participate equally in the remaining surplus profits. Preferred stock may be known by different fanciful designations, more or less descriptive of the characteristics of the share to which the special names are applied. Thus we find stock designated as "guaranteed stock," but this is nothing more than cumulative preferred stock masquerading under a misleading name¹³. Such stock does not create the relation of debtor and creditor between the corporation and the stockholder. It would be in contravention of settled principles to permit a corporation to bind itself to pay a dividend at all hazards. No matter what the guaranty, it will be unenforceable if its enforcement would compel the corporation to impair its capital stock. It has been held in this State that a corporation might contract with a stockholder to pay him a fixed interest upon his investment, at least for a limited period of time, and that such contract would create the relation of debtor and creditor to the extent of such interest¹⁴. It is said upon high authority that such agreements are valid only when they are construed to require payment from net earnings alone¹⁵.

The term "treasury stock" is descriptive of any class of stock which has been once issued and has afterwards been reacquired by the corporation, either through gift or by purchase¹⁶. It differs from capital stock in this, that whereas capital stock may not be sold at less than par, treasury stock, after once having been fully paid up, may be sold at any price which the company chooses to place upon it, and the purchaser takes it free from liability for assessments, regardless of the price paid¹⁷.

§79. Price of Shares.

As between the corporation and subscribers to capital stock, the rule is that all sales should be made at par¹⁸. The capital stock being a trust fund, it cannot be made fully paid by any trick, artifice or device falling short of good faith payment of full value¹⁹. Subscribers remain liable, at least as to creditors.

13. Lockhart v. Van Alstyne, 31 Mich. 75-83.

14. McLaughlin v. Detroit & Milwaukee Ry. Co., 8 Mich. 100.

15. Cook's Corp., Sec. 277.

16. Gustin v. Merrill, 144 Mich. 498-515.

17. Cook's Corp., Sec. 30.

18. Wood v. Sloman, 150 Mich. 177-193.

19. In Upton v. Tribilcock, 91 U. S. 45, 23 L. ed. 203-205, Justice Hunt said: "The capital stock of a moneyed corporation is a fund for the payment of its debts. It is a trust fund, of which the directors

for the difference between par value and any less sum which they have paid²⁰. The mere fact of receiving stock from the corporation gives rise to subscription liability for its payment at par, even though there may have been no express agreement²¹. The fact that stock is sold at par does not always make the sale unimpeachable. If the stock was worth *much more than par*, and if the price at which it was sold was therefore grossly inadequate, and if the sale was not made by the directors in good faith and in the fair exercise of their discretion, such sale may be held to amount to a fraud upon the stockholders. In that event equity will set the sale aside²².

There is an important exception to the rule that the capital stock of a corporation must not be sold for less than par. A going concern whose capital has become impaired, may in good faith, for the purpose of mending its condition, place additional stock upon the market at the best price obtainable, or issue it as a bonus for loans, and the purchasers will not be liable to creditors for any sum beyond the contract price²³. Should it appear, however, that the purpose of the issue was merely to gain funds for the enlargement of an unimpaired business, or to distribute shares among stockholders, or others, at a nominal price, and not for the preservation of the corporation against impending disaster, the takers of such shares will be held liable to creditors for the difference between the price paid and par²⁴. Subject to the rules above stated, the right to fix the price at which the

are the trustees. It is a trust to be managed for the benefit of its shareholders during its life, and for the benefit of its creditors in the event of its dissolution. This duty is a sacred one, and cannot be disregarded. Its violation will not be undertaken by any just-minded man, and will not be permitted by the courts. The idea that the capital of a corporation is a foot-ball to be thrown into the market for the purposes of speculation, that its value may be elevated or depressed to advance the interests of its managers, is a modern and wicked invention. Equally unsound is the opinion that the obligation of a subscriber to pay his subscription may be released or surrendered to him by the trustees of the company. This has been often attempted, but never successfully.

The capital paid in, and promised to be paid in, is a fund which the trustees cannot squander or give away. They are bound to call in what is unpaid, and to carefully to husband it when received."

20. *Young v. Erie Iron Co.*, 65 Mich. 111; *Dieterle v. Ann Arbor Paint & Enamel Co.*, 143 Mich. 416; *Moore v. Universal Elevator Co.*, 122 Mich. 48-54; *McBryan v. Universal Elevator Co.*, 130 Mich. 111.

21. *Reid v. Detroit Ideal Paint Co.*, 132 Mich. 528-530.

22. *Essex v. Essex*, 141 Mich. 200.

23. *Dummer v. Smedley*, 119 Mich. 466-477, 38 L. R. A. 490; *Handley v. Stutz*, 139 U. S. 417, 35 L. ed. 227.

24. *Handley v. Stutz*, (Id.); *Cook's Corp. Sec. 42*; *Marshall's Corp.* p. 560.

stock of the corporation may be sold is vested in the board of directors. So long as they transgress no settled rule of law, and so long as they exercise their discretion fairly and honestly, the price fixed by them will not be subject to review by the courts.

§80. Subscriptions.

A binding subscription may be made by signing the articles of association²⁵, or by executing a separate subscription agreement²⁶, or by merely accepting certificates of stock issued in the name of the acceptor²⁷. Subscription contracts are assignable²⁸.

A subscription does not become enforceable until the amount required by law as a condition precedent to organization has been subscribed²⁹. But the condition may be waived. Participation in the affairs of the company, with full knowledge and without objection is construed to be a waiver³⁰. The estoppel which operates against denial of corporate existence, does not deprive a subscriber of the right to defend against subscription liability on the ground that conditions precedent have not been performed³¹. Thus where a subscription has been made *prior* to organization, it can not, in the absence of a waiver, be enforced until after a *de jure* organization has been effected³². A *de facto* organization is sufficient for the purpose of supporting an action for the collection of a subscription made *after* incorporation³³.

Secret subscription agreements between officers or agents of the corporation and subscribers are void. The subscription is

25. *Valentine v. Water Power Co.*, 128 Mich. 280-294.

26. *International Fair & Exposition Ass'n. v. Walker*, 83 Mich. 386, 88 Mich. 62.

27. *Reid v. Detroit Ideal Paint Co.*, 132 Mich. 528-530. A repudiated promise to take stock off the hands of an officer who is to pay the corporation for it in the first instance, does not constitute the promise a stockholder.—*O'Brien v. Fulkerson*, 75 Mich. 554.

28. *Valentine v. Water Power Co.*, 128 Mich. 280-294; *Berrien Springs Water Power Co. v. Hoffman*. (Id.): *Wells v. Rodgers*, 50 Mich. 294-296.

29. *International Fair Association v. Walker*, 83 Mich. 62-88; *Cur-*

ry Hotel v. Mullins, 93 Mich. 318; *Swartwout v. Railroad Co.*, 24 Mich. 389; *Monroe v. Railroad Co.*, 28 Mich. 272; *Shurtz v. Schoolcraft and T. R. Co.*, 9 Mich. 269-273.

30. *Ada Dairy Association v. Mears*, 123 Mich. 470-472; *International Fair Ass'n v. Walker*, 83 Mich. 386-393, 88 Mich. 62-88.

31. *Monroe v. Railroad Co.*, 28 Mich. 272; *Swartwout v. Railroad Co.*, 24 Mich. 389.

32. *Marshall's Corp.*, p. 121.

33. *International Fair Ass'n v. Walker*, 97 Mich. 159, 88 Mich. 62, 83 Mich. 386. Where a subscription to one of two consolidating companies is sought to be enforced by the resulting company, a clear compliance with the laws authorizing the

enforceable as though no such agreement had been made³⁴. But a subscription may be made conditionally. It may be conditioned upon the happening of some future event, as, for example that the subscriber shall be given time and opportunity for investigation of the resources of the corporation, and that his subscription shall not be binding unless he shall be satisfied to have it so. In an action between the corporation and the subscriber, where no rights of creditors have intervened, such an agreement will be given effect by the courts³⁵. Where a subscription contract embraces as one of its material provisions, an agreement on the part of the company, void under the statute of frauds if not in writing, the subscription must be signed in behalf of the company as well as by the stock subscriber, or it will be a nullity for want of mutuality³⁶. It is competent for a stockholder, upon selling stock in the corporation, to make a private agreement with the purchaser to take the stock off the purchaser's hands at a certain price (usually the amount invested, plus interest) within a given time. Such agreements are valid as between the parties. The corporation, of course, is not concerned³⁷. But an agreement between a stockholder and the corporation to the effect that the stockholder's investment shall be held as a loan, subject to repayment, is illegal, and will be set aside in equity at the instance of injured non-assenting stockholders, or of creditors³⁸. Were such an agreement sustained, the whole capital stock of a corporation might prove to be nothing more than a fund accumulated by loans obtained from, and repayable to, its stockholders. Under such conditions there would be no safety for creditors, and stockholders who paid up their subscriptions in good faith would be in a worse position than those who made their contributions pursuant to the secret.

consolidation must be shown. *Mansfield, etc. Co. v. Drinker*, 30 Mich. 124; *Peninsular R. Co. v. Tharp*, 28 Mich. 506.

34. *Zabel v. New State Telephone Co.*, 127 Mich. 402-404.

35. A verbal condition that a written subscription shall not be enforceable until the happening of a certain event may be given in evidence to defeat an action upon the subscription. Such evidence does not tend to vary a written agreement, but tends rather to show that no bind-

ing agreement was ever made.—*Ada Dairy Ass'n v. Mears*, 123 Mich. 470-473.

36. *Co-operative Telephone Co. v. Katus*, 140 Mich. 367. In this case a stock subscription, embracing a provision requiring the company to furnish the subscriber a telephone for three years, being unsigned by the corporation, was held unenforceable against the subscriber.

37. *Holiday v. Wright*, 134 Mich. 608.

38. *Clark v. E. C. Clark Machine Co.*, 151 Mich. 416-423.

unconscionable agreement. Subscription agreements embodying contracts for employment, and made contingent upon retention of the employee in the service of the company, can not be sustained in the absence of unanimous consent of the stockholders³⁹. Such agreements amount to an unfair discrimination. Among shareholders, "equality is equity." In a stock subscription, time is not of the essence of the contract⁴⁰. Even where it is made essential by the terms of the agreement, the provision is waived by accepting payment at a later date⁴¹. If stock is subscribed to be taken at some fixed future date, tender of the stock within a reasonable time after the date so fixed perfects the corporation's right of action⁴². Where the corporation, or any other vendor of stock, brings suit for the purchase price of specific shares tendered and refused, it is incumbent upon such vendor to show continuous ability to produce and deliver the stock sold. In other words, the vendor must keep the tender good. Where it is shown that the shares were pledged, that fact is not of itself conclusive evidence that the tender was not continuing. It is for the jury to determine whether the stock, though pledged, remains subject to the vendor's control sufficiently so it could have been delivered upon demand. If such control was pre-

39. *Wilbur v. Stoepel*, 82 Mich. 344-346. In this case a stock purchaser was to be given employment for two years, with the understanding that, in case of his earlier discharge, two of the directors would repurchase his stock. In holding the transaction void, Chief Justice Champlin said: "The defendants were directors, and, in the management of corporate affairs cannot but be unduly influenced by such an agreement. Their natural desire and inclination would be to continue the plaintiff as manager, although it were against the interest of the other stockholders and would be against their own as stockholders, but for the agreement which might render them liable for the payment of a larger sum if they failed to retain him. Nor is the contract made valid by the good faith of the parties to it. * * * The law wisely condemns and prohibits all such contracts." In this case the court

left the parties where they had placed themselves by their void agreement. In *Seymour v. Detroit etc. Rolling Mills*, 56 Mich. 117, the corporation was a party to an agreement somewhat similar to the one mentioned above, namely, that a purchaser of stock was to be (a) elected a director, (b) elected superintendent, (c) to buy stock on credit, and (d) to have a fixed salary. The agreement not having been made by unanimous assent of the stockholders, it was held that the arrangement to elect the purchaser a director was void, but that the contract was severable, and that the purchaser might, upon failure of election, tender back his stock and recover his payments.

40. *Holliday v. Wright*, 134 Mich. 608-611.

41. *Holliday v. Wright*, (Id.): *Malone v. Gates*, 87 Mich. 332.

42. *Edmonds v. Evarts*, 146 Mich. 483.

served, the tender must be sustained⁴³. Unpaid subscriptions are assets in the hands of the corporation, or its receiver, for the payment of all manner of legitimate claims⁴⁴. Creditors are entitled to the full benefit of the stockholder's contract as he has made and published it⁴⁵.

§81. False Representation and Fraud.

A subscription obtained through false representations of material facts can not be enforced, even at the instance of creditors of the corporation, provided the subscriber promptly repudiated his agreement, for that reason, upon discovery of the fraud, and has thereafter done no act inconsistent with such disavowal⁴⁶. But where the subscriber, after discovering the fraud, takes part in the management of the corporation, receives dividends, or otherwise treats his subscription as valid, he can not thereafter rescind. Having, with full knowledge, adopted the benefits of his agreement, he is estopped from escaping its burdens⁴⁷. False representations upon immaterial matters, or

43. Hogan v. Neumeister, 117 Mich. 498-500.

44. Where the legislature has given corporate directors a direct remedy against stockholders, the language of the statute will not be enlarged by construction. For example, in Bohn v. Brown, 33 Mich. 257, it was held that a statute authorizing a direct action against stockholders for "debts contracted," did not extend to judgments for torts.

45. Moore v. Universal Elevator Co., 122 Mich. 48-59. Equity has common law jurisdiction, independent of any statute, to compel subscribers to pay their subscriptions for the benefit of creditors. Pettibone v. McGraw, 6 Mich. 440-445.

46. Dieterle v. Ann Arbor Paint & Enamel Co., 143 Mich. 416-423. In International Wrecking etc. Co. v. McMorran, 73 Mich. 467-470, it was held that the withholding from record of a chattel mortgage upon the corporate assets operated as a fraud upon persons who became interested as stockholders supposing the corporate property to be free from liens. In Harris v. Piatt, 64 Mich. 105, it was held that where A

agreed to exchange stock to B for certain property, and then caused the corporation to reduce the price of its stock to sixty cents on the dollar, to the end that he might pay for the property with such depreciated stock, A's contract with B became unenforceable. The mere fact that a stock certificate names an erroneous sum as the capital stock of the company does not, of itself, necessarily amount to a false representation.—Hoeft v. Kock, 119 Mich. 458.

47. Dieterle v. Paint & Enamel Co., 143 Mich. 416-423; Speicher v. Thompson, 141 Mich. 654; Detroit Driving Club v. Fitzgerald, 109 Mich. 670-676; St. John's Mfg. Co. v. Munger, 106 Mich. 90-95; International Fair Ass'n. v. Walker, 83 Mich. 386, 88 Mich. 62-88, 97 Mich. 159; Halsey Fire Engine Co. v. Donovan, 57 Mich. 318-321; Bissell v. Heath, 98 Mich. 472. In Duffield v. Barnum Wire & Iron Works, 64 Mich. 293-301, Justice Champlin said: "Contracts induced by fraud are not void, but voidable, and the injured party has a right to have them abrogated. Relief can be had either at law or in equity, but will

upon mere matters of opinion, afford no ground for recession⁴⁸.

§82. Remedies for Fraud.

The rule in Michigan is, that one who purchases property in reliance upon false statements, concerning it, may recover his damages from the perpetrator of the fraud, regardless of whether the representations were, or were not, made in bad faith⁴⁹. The injury having been accomplished, the good motives of the wrongdoer form no defense. By statute⁵⁰ in this State no action lies by reason of any verbal representation or assurance, made "concerning the character, conduct, credit, ability, trade or deal-

not be granted where the subscriber has been guilty of negligence in informing himself of the actual facts, or where, in consequence of his delay in repudiating the contract, innocent third parties, either shareholders or creditors, have acquired rights which would be prejudiced by its recession. And it makes no difference in what aspect the question is raised,—whether the subscriber who has paid for his stock repudiates the contract on the ground of fraud, and sues to recover back, or the subscriber is sued for unpaid subscription, and defends on the ground of fraud. In either case, if the stock subscriber has been negligent in informing himself of the actual facts, or if, in consequence of his apparent relations with the corporation as a stock subscriber, innocent third parties have acquired rights upon the faith of such relation which would be prejudiced by his recession, he will be held as a subscriber, and will not be allowed, in the one case, to withdraw the capital which he has paid in, or, in the other, to escape payment." Where a stockholder had delayed seventeen years in bringing an action to recover back money claimed by him to have been procured to be invested through fraud on the part of the corporation, a charge to the jury that, "If the stockholder had an opportunity to inform himself of the falsity of the representations, and failed to avail himself of such opportunity," he could not recover, was

sustained.—*McEacheran v. Western Trans. & Coal Co.*, 97 Mich. 479-483. So where a judgment was obtained upon a stock subscription, and the subscriber gave his note for the judgment, it was held in a suit on the note that the maker was estopped from urging the defense that the subscription was void. *Gould v. Vaughn*, 30 Mich. 375.

48. *Getchell v. Dusenbury*, 145 Mich. 197; *Dieterle v. Paint & Enamel Co.*, 143 Mich. 416-423; *Hasse v. Freud*, 119 Mich. 358-360; *French v. Ryan*, 104 Mich. 625-630.

49. In *Krause v. Cook*, 144 Mich. 365-367, Justice Hooker said: "It is the settled rule in this State, whatever the rule may be elsewhere, that one who purchases property in the belief of, and reliance upon, false statements regarding it, may sue for and recover the damages occasioned thereby, whether the representations are made in good or bad faith." For law cases on this point see *Angell v. Loomis*, 97 Mich. 5; *Totten v. Burhans*, 91 Mich. 499; *Ripley v. Case*, 86 Mich. 263; *Holcomb v. Noble*, 69 Mich. 396; *Baughman v. Gould*, 45 Mich. 481; *Beebe v. Knapp*, 28 Mich. 53. For same rule applied in equity cases, see *Sawyer v. Building Ass'n*, 103 Mich. 223; *Webster v. Bailey*, 31 Mich. 36; *Steinbach v. Hill*, 25 Mich. 78; *Beebe v. Young*, 14 Mich. 136; *Converse v. Blumrich*, 14 Mich. 109. That reliance upon the false statements is necessary, see *Andrews v. Brace*, 154 Mich. 126.

50. C. L. 1897, Sec. 9518.

ings of any other person." The term "person" as used in this statute applies to corporations⁵¹. Thus, good faith verbal representations of directors, made for the purpose of selling corporate stock and not for personal gain are within the protection of the statute, and are not actionable, even though untrue. But verbal representations of an agent selling stock on commission for personal profit are not within the protection of the statute, and are actionable if false⁵².

§83. Transfers.

A provision will usually be found in the charter, the by-laws, the stock certificate itself, or in all three, providing that shares shall be, "transferable only upon the books of the corporation." This provision operates merely for the protection of the company. It is designed to enable the corporation to know its stockholders. In the giving of notice, the payments of dividends, and the extension of credit to members, the corporation is entitled to rely upon its records, in the absence of contravening notice⁵³. As between the transferor and the transferee, a transfer by delivery is perfectly valid⁵⁴. Except as modified by statute, stock certificates, as we have seen, stand upon the footing of commercial paper⁵⁵. *Bona fide* purchasers or pledgees of shares

51. *Getchell v. Dusenbury*, 145 Mich. 197-202.

52. In *Hess v. Culver*, 77 Mich. 598-602, 6 L. R. A. 498, Justice Campbell said of Sec. 9518 (ante): "That statute can not apply to conspiracy or frauds where the representation is made to enable the party making it to profit by it." In *Bush v. Sprague*, 51 Mich. 41-56, the same Justice said: "Whenever any substantial gain accrues to the wrongdoers by the machinery of conspiracy, it can not be said that the parties sued are charged upon mere representations or assurances. Neither can this be said where they have acted in concert, but by each one's choice of means, verbal or acted, to reach damaging results to the party defrauded. If mere words are sued upon, the words may come within the statute. But if they are but a part of the evil machinery, I can not think the statute meant that they should lend cover to the fraud.

See also *Hubbard v. Long*, 105 Mich. 442-449; *Getchell v. Dusenbury*, 145 Mich. 197-202. As to criminal liability for fraudulent issue, sale or pledge of stock, see C. L. 1897, Sec. 11362, *et seq.* Defrauded subscribers may join in a suit for equitable relief, provided the false representations, interests, subject matter, and relief sought are identical as to each complainant joined. Under such circumstances, it is immaterial that each subscriber purchases independently upon the strength of false representations made by defendants at different times. *Hamilton v. Hulled Bean Co.*, 143 Mich. 277, (Id.) 16 D. L. N. 273 (May, 1909); *Sherman v. Stove Co.*, 85 Mich. 169.

53. *Marshall's Corp.*, p. 741.

54. *Just v. State Savings Bank*, 132 Mich. 600-606; *Walker v. Detroit Transit Ry. Co.*, 47 Mich. 348-350.

55. *Rough v. Breitung*, 117 Mich.

transferred by endorsement and delivery, (whether the transfer is or is not made upon the corporate books) will be protected in their title to the same extent as transferees of negotiable paper, except as against statutory liens held by the corporation⁵⁶. It has even been held that actual delivery is not necessary for the purpose of creating the transferee a stockholder, where the transferor, the transferee, and the corporation have all acted with the understanding that ownership has become vested in the transferee⁵⁷.

Endorsement in blank, and delivery, of a valid certificate constitutes the transferee a stockholder from the moment of delivery, and confers upon him all of the rights, and impose upon him all of the liabilities of a stockholder. Regardless of the ordinary statute and by-law provisions concerning transfers, these rights and obligations arise without transfer upon the books of the company⁵⁸. Thus, where stock has been transferred by way of *bona fide* sale or pledge, though informally, and without registration or other notice to the corporation, one who subsequently levies upon it for the debt of the transferor takes nothing by his levy. The transferor's title having been divested, nothing remains to which the levy can attach. It follows that a purchaser at an execution sale, based upon such a levy, obtains no title to the stock⁵⁹. As between the transferor and the corporation, transfer upon the books, in the absence of notice to the contrary, is conclusive of the fact that title has passed from the transferor to the transferee. The corporation has a right to rely upon its uncontradicted records of the transaction⁶⁰.

As between the transferor and third parties, a transfer upon the books, absolute upon its face, is *prima facie*, but not conclusive, evidence of sale⁶¹. It may be shown to have been a

48-55; McLean v. Chas. Wright Medicine Co., 96 Mich. 479; Mandlebaum v. North American Mining Co., 4 Mich. 465.

56. Goodwin v. Hampton Transportation Co., 133 Mich. 229-231; McLean v. Chas. Wright Medicine Co., 96 Mich. 479-482; Daggett v. Davis, 53 Mich. 35; Walker v. Detroit Transit Ry. Co., 47 Mich. 338; Mandlebaum v. North American Mining Co., 4 Mich. 465.

57. Michigan Trust Co. v. Com-

stock, 123 Mich. 689. Thus it was held that stock subscribed by X but issued direct to Y, who had purchased from X, was validly issued. —Bissell v. Heath, 98 Mich. 468-474.

58. Foster v. Row, 120 Mich. 1-16; McLean v. Chas. Wright Medicine Co., 96 Mich. 479.

59. May v. Cleland, 117 Mich. 45-47, and cases there cited.

60. Marshall's Corp., p. 741.

61. May v. McQuillan, 129 Mich. 392.

mere pledge⁶². Creditors may contradict the recital of the record, or impeach the *bona fides* of the transfer. Thus, where a transferor offers the records of the corporation to prove that he was not a stockholder at the time when a liability is claimed to have arisen against him, it may be shown, in opposition, that the transfer upon the books was made in anticipation of the sale, or that the transfer was made in bad faith and for the purpose of escaping liability. In either of these instances, full stockholder's liability would attach to the transferor, notwithstanding the transfer⁶³. Where the intent prompting the transfer is to escape liability, the mere fact that the transfer was made to a *bona fide* purchaser will not afford the transferor immunity⁶⁴. Intent is the controlling consideration. Other elements, such as the non-residence or insolvency of the transferee are important only as they bear upon the question of intent⁶⁵. A transfer of shares in a going concern, by gift, sale, or otherwise, made in good faith, and without intent to escape liability, will be sustained as against creditors. The mere fact that, unknown to the transferor, the corporation was failing or was insolvent at the time, will not under such circumstances, give rise to any continuing liability on the part of the transferor, and this is true even though the transferee was irresponsible, or was a non-resident of the State⁶⁶.

A transferee who has been wrongfully denied transfer upon the corporate records, has, nevertheless, all of the rights of a stockholder, notwithstanding a provision of the statute, or by-laws, making stock transferable only upon the books of the corporation⁶⁷. Refusal of the company to make transfer upon the books of the corporation is no conversion of the shares. The transferee has not been divested of his property. He remains a stockholder⁶⁸. Mandamus does not lie to compel a transfer. A remedy may be had either at law or in equity. The law side of the court gives an action for damages for non-transfer. Equity has power to compel the transfer to be made⁶⁹.

62. *Smith v. Nixon*, 145 Mich. 593-595; *May v. Genesee County Savings Bank*, 120 Mich. 330-334.

63. *May v. McQuillan*, 129 Mich. 392-396.

64. *May v. McQuillan*, (Id.)

65. *Foster v. Row*, 120 Mich. 1-27.

66. *Foster v. Row*, (Id.); *Sykes v. Hollaway*, 81 Fed. 432.

67. For such a statutory provision, see Act 232 Pub. Acts 1903, Sec. 16; *Noller v. Wright*, 138 Mich. 416.

68. *McLean v. Chas. Wright Medicine Co.*, 96 Mich. 479-482.

69. *Clarke v. Hill*, 132 Mich. 434.

§84. Calls.

A Call is a demand for payment of a subscription⁷⁰. Power to make calls is vested in the board of directors⁷¹. No valid call can be made before compliance with all necessary conditions precedent⁷². Thus, where subscriptions are given upon condition that they shall not be binding, or that no call shall be made, until the happening of some future event, a call made prior to the time contemplated will not support an action upon the subscription⁷³. Where subscriptions are made subject to call, the statute of limitations does not begin to run until a call has been made, either expressly by some lawful authority, or by implication through the operation of some statute⁷⁴. Like any other debt, the amount called in upon a subscription bears interest from the date of demand⁷⁵.

§85. Corporate Liens on Stock.

Not infrequently statutes provide that the corporation shall have a lien upon its stock to the extent of debts due from the respective holders. The expression "debts due" is construed to mean "debts owing"⁷⁶, and is not restricted to the narrower meaning of "debts matured and immediately payable." The provision being for the benefit of the corporation and its creditors, a liberal construction is warranted. There is no reason for applying the narrower view that, within the meaning of the statute, debts to be due must be *overdue*.

Liens may be created by by-laws, but when so created they are not binding upon *bona fide* purchasers⁷⁷. They are good, however, against those who take with notice, or without giving value⁷⁸. A lien created by statute is binding, even upon innocent purchasers for value⁷⁹. An unregistered transfer, of which the

70. *Omo v. Bernart*, 108 Mich. 43-46.

71. *Halsey Fire Engine Co. v. Donovan*, 57 Mich. 318.

72. *Westcott v. Minn. Mining Co.*, 23 Mich. 145.

73. *Westcott v. Minn. Mining Co.*, (Id.)

74. *Webber v. Hovey*, 108 Mich. 49-54.

75. *May v. Ullrich*, 132 Mich. 6-9.

76. *Cook's Corp.*, Sec. 327.

77. *Bronson Electric Co. v.*

Rheubottom, 122 Mich. 608; *Just v. State Savings Bank*, 132 Mich. 600-607.

78. *Bronson Electric Co. v. Rheubottom* (Id.)

79. *Citizens State Bank v. Kalamazoo County Bank*, 111 Mich. 313; *Oakland County Savings Bank v. State Bank*, 113 Mich. 284; *Michigan Trust Co. v. State Bank*, 111 Mich. 306; *Newberry v. Detroit & Lake Superior Iron Co.*, 17 Mich. 140.

corporation has had no notice, will be subject to the lien of the corporation arising upon a debt of the transferor contracted after the transfer was made⁸⁰. But if the corporation has actual notice of the transfer, and, having such notice, extends credit to the transferor, no lien will arise⁸¹. After a lien in favor of the corporation has attached to shares, transfer of the shares on the books of the company can not be compelled until the lien has been satisfied⁸². Should the corporation consent to such transfer, such consent would operate as a waiver of the lien⁸³.

Where a prospective transferee inquires of the company concerning the indebtedness of a stockholder, and is falsely informed, by a proper officer, that no such indebtedness exists, the corporation will be estopped from denying the truth of such officer's assertion, and its lien will be held to have been waived, as to such transferee, if he thereupon becomes a *bona fide* purchaser or pledgee of the shares in question⁸⁴. A general lien created in favor of the corporation by statute applies to all debts due the corporation from stockholders, both in their individual capacity, as sureties, and as members of firms owing the corporation⁸⁵. Such liens attach also for unpaid subscriptions. In case the stock is sold and brings less than the amount of the subscription debt, the stockholder is liable, as in other cases, for the deficiency⁸⁶. The fact that the corporation may hold other security for the indebtedness of a stockholder does not prevent

80. *Michigan Trust Co. v. State Bank*, 111 Mich. 306; *Citizens Bank v. Kalamazoo County Bank*, 111 Mich. 313; *Newberry v. Detroit & Lake Superior Iron Co.*, 17 Mich. 140.

81. *Birmingham Savings Co. v. Louisiana National Bank*, 99 Alabama 370, 20 L. R. A. 600.

82. *Citizens Bank v. Kalamazoo County Bank*, 111 Mich. 313-319; *Michigan Trust Co. v. State Bank*, 111 Mich. 306; *Newberry v. Detroit & Lake Superior Iron Co.*, 17 Mich. 140.

83. *Just v. State Savings Bank*, 132 Mich. 600-603.

84. *Oakland County Savings Bank v. State Bank*, 113 Mich. 284-286. In his case Justice Montgomery said: "The question is, what are proper steps to be taken to ascertain whether such a lien exists. If one may not do this with corre-

spondence with the bank, or with the officer of the bank universally recognized as representing the bank in its correspondence, there would seem to be an end to legitimate transactions in stock of corporations.

* * * Common prudence suggests that the purchaser may inquire in the usual channels for the purpose of ascertaining whether the stock is subject to a lien. If such an inquiry be directed to the party who conducts the correspondence of the bank, it is bare assertion to say that, because he has not the power under the law to compel the board to consent to the transfer of the stock, he can not, through a simple lie, estop the bank."

85. *Citizens Bank v. Kalamazoo Bank*, 111 Mich. 313.

86. *Carson v. Arctic Mining Co.*, 5 Mich. 288; *Merrimac Mining Co. v. Bagley*, 14 Mich. 501-504.

enforcement of the statutory lien⁸⁷. From what has been said it follows, that a transferee of shares should ascertain from the corporation, in advance, the state of the transferor's title, and, upon taking an assignment of stock, should either have a new certificate issued to himself as owner or pledgee, as the case may be, or should at least give the corporation actual notice of his interest.

§86. Pledges of Stock.

Like an absolute transfer, a pledge may be made by endorsement and delivery of certificates⁸⁸. Parol evidence is admissible to show that a transfer, absolute upon its face, is really a pledge⁸⁹. A pledgee who has stock transferred to his own name upon the books of the company, thus allowing himself to be held out as the owner of the shares, incurs, as to creditors, the liabilities of a stockholder⁹⁰. But he cannot be held liable to creditors on account of an erroneous entry made, without his knowledge, upon the books of the corporation⁹¹.

A *bona fide* pledgee of stock issued as "*fully paid*" takes it free from liens for unpaid subscription assessments⁹². But where the corporation has a statutory lien for other indebtedness, the pledgee takes subject to it, in the absence of any waiver or estoppel on the part of the corporation⁹³. The statute is notice to all the world, hence there can be no such thing as a *bona fide* pledgee as against liens so created. As we have seen, a lien created by a by-law is upon a different footing, and a *bona fide* pledgee of stock subject to such a lien takes the shares free from the encumbrance⁹⁴.

One who grants an extension upon past due indebtedness, in consideration of such indebtedness being secured by a pledge is

87. Cook's Corp., Sec. 528.

88. Just v. State Savings Bank, 132 Mich. 600-606.

89. Smith v. Nixon, 145 Mich. 593-595; May v. Genesee County Savings Bank, 120 Mich. 330-334.

90. Pauly v. Trust Co., 165 U. S. 606, 41 L. ed. 847; American Steel & Wire Co. v. Eddy, 138 Mich. 403-409.

91. May v. Savings Bank, 120 Mich. 330-334. It is the corporate record, not the form of the certificate, that affords creditors the notice upon which they are entitled to

rely. (Id.)

92. Young v. Erie Iron Co., 65 Mich. 111.

93. Oakland County Savings Bank v. State Bank, 113 Mich. 284; Citizens State Bank v. Kalamazoo County Bank, 111 Mich. 313; Michigan Trust Co. v. State Bank, 111 Mich. 306; Michigan Trust Co. v. State Bank, 111 Mich. 306.

94. Bronson Electric Light Co. v. Rheubottom, 122 Mich. 608; Just v. State Savings Bank, 132 Mich. 600-607.

a *bona fide* pledgee, provided he takes without notice of imperfections in the title of the pledgor. In other words, the pre-existing indebtedness is a good consideration for the pledge⁹⁵. It has been held that, where stock has been issued to a promoter as a part of fraudulent secret profit, though subject to cancellation in his hands, such stock can not be cancelled in the hands of a *bona fide* pledgee⁹⁶.

Trover lies for the conversion of pledged shares⁹⁷. Transfer by a pledgee of a certificate held in pledge amounts to a conversion⁹⁸, not only of the certificate, but of the shares as well⁹⁹. In an action for conversion, the pledgor is entitled to recover the value of the stock. It is no defense that the pledgee had on hand, at all times, an equal number of shares standing in his name on the books of the same corporation¹⁰⁰.

§87. Foreclosure of Pledge.

Upon maturity and non-payment of the debt secured, the pledgee may proceed at will to foreclose his lien. Should he delay, he will not be liable to the pledgor for any subsequent depreciation. The pledgee is not obliged to sell, even through requested so to do by the pledgor. The pledgor's sole remedy is by paying the debt.

Sale without notice is a conversion of the stock¹⁰¹, unless

95. *Just v. State Savings Bank*, (Id.); *Schloss v. Feltus*, 103 Mich. 525-532; *DeMay v. Defer*, 103 Mich. 239-245.

96. *Cuban Colony Co. v. Kirby*, 149 Mich. 453-459.

97. *Morton v. Preston*, 18 Mich. 60; *Daggett v. Davis*, 53 Mich. 36.

98. *Allen v. Dubois*, 117 Mich. 115-117; *Feige v. Burt*, 118 Mich. 243; *Hempfling v. Burr*, 59 Mich. 294; *Daggett v. Davis*, 53 Mich. 35.

99. *Morton v. Preston*, 18 Mich. 60.

100. *Allen v. Dubois*, 117 Mich. 115.

101. The following propositions are supported by the decision announced by Justice Moore in *Feige v. Burt*, 118 Mich. 243:

(a) Sale without notice is conversion of the stock;

(b) In the absence of agreement otherwise, the sale must be at public auction;

(c) Sale may be had after notice without judicial proceedings;

(d) Conversion of the stock by the pledgee entitles the pledgor to recover its value, against which the pledgee may recoup the amount of his claim. See also *Hempfling v. Burr*, 59 Mich. 294; *Daggett v. Davis*, 53 Mich. 35. As a matter of practice, it is best to disregard all waivers made by the pledgor, and to proceed to sale at public auction. There is no statute in this state directing the procedure to be observed in effecting such sales. Notice of the time and place of the proposed sale should be personally served upon the pledgor a reasonable length of time prior to sale. In addition to this the sale should be publicly advertised. Such advertisement as is provided by law for constable sale of personal property (C. L. 1897, Secs. 881-882) is regarded as sufficient. At the time and place of

notice has been waived. The notice should be personal, unless some other method has been agreed upon. The sale must be public, in the absence of an agreement that it may be private. It is well established that the pledgee may not, directly or indirectly become a purchaser at his own sale. Should he bid in the stock, it will not amount to a conversion. The whole proceeding being void, he will still hold the stock as a pledgee. The pledgor may, however, either before or after sale, agree that the pledgee may become the purchaser, and such agreement will be binding¹⁰². Foreclosure of a pledge may be had in chancery, or pursuant to the common law right of sale incident to all pledges. Power of sale is fully implied from the nature of the transaction, and need not be expressly conferred.

sale, the proceedings may properly be the same as would be followed in case of a foreclosure sale under a chattel mortgage.
102. Cook's Corp. Sec. 479.

CHAPTER IX.

RIGHTS AND LIABILITIES OF STOCKHOLDERS.

§88. Membership.

§89. Proxies.

§90. Dividends.

§91. Liability for Labor Debts.

§92. Subscription Liability.

§88. Membership.

Membership in a private business corporation arises at once as an incident of the ownership of stock. When stock is purchased¹ or subscribed², the transferee or subscriber becomes *ipso facto* invested with all of the rights of membership. The two principal rights are, first, the right to participate in meetings of the stockholders³, and second, the right to participate in dividends⁴.

§89. Proxies.

The word "proxy" is applied interchangeably to the agent who represents a stockholder at meetings, and to the written power under which the agent acts. As to the instrument, no special form need be followed, unless required by the by-laws⁵. The power should be in writing⁶ and should be filed with the company. It may be revoked verbally, and this is true when it purports on its face to be irrevocable, except in cases where the power is coupled with an interest vested in the agent⁷. The right to attend and vote by proxy did not exist at common law⁸.

1. Even where the stock is purchased with wrongful motives, the right of membership conferred can not be denied by the corporation. *Rice v. Rockefeller*, 134 N. Y. 174, 17 L. R. A. 237. Transfer on the books is not essential to confer these rights. *McLean v. Medicine Co.*, 96 Mich. 479-481.

2. *Valentine v. Water Power Co.*, 128 Mich. 280-294.

3. Every stockholder has the

right to attend and participate in stockholders' meetings. Forcible ejectment from a meeting is a trespass. *Noller v. Wright*, 138 Mich. 416.

4. *Hunter v. Roberts, Throp & Co.*, 83 Mich. 63.

5. *Peoples Home Savings Bank v. Superior Court*, 104 Cal. 649, 29 L. R. A. 844-846, Note III.

6. *Cook's Corp.* 610.

7. *Marshall's Corp.* 914.

8. *Marshall's Corp.* 909.

By statute⁹ in Michigan, the right may always be conferred by by-laws not inconsistent with the general laws and the charter. The cumulative voting law¹⁰ confers upon corporations generally the right to vote by proxy for the election of directors. In the absence of a permissive statute or by-law, the right to vote by proxy does not exist in this state. A stockholder who has been present by proxy is bound by the same estoppels as though he had been present in person¹¹.

§90. Dividends.

A dividend is net gain declared by the directors for distribution among the stockholders¹². It is not material how the gain arises. It may accrue from donations¹³ as well as from the profits of the enterprise. But it must be a fund capable of division without impairment of the capital stock¹⁴. Discretionary power to declare dividends is vested in the board of directors¹⁵. There is no dividend until one has been declared¹⁶.

9. C. L. 1897, Sec. 8528.

10. C. L. 1897, Sec. 8553 (Am.)

11. *Stradley v. Cargill Elevator Co.*, 135 Mich. 367-375.

12. *Lockhart v. Van Alstyne*, 31 Mich. 75. *Field v. Lamson & Goodnow Mfg. Co.*, 162 Mass. 388, 27 L. R. A. 136. For distinction between "net earnings" and dividends, see *Richardson v. Buhl*, 77 Mich. 632-653.

13. *Crane v. Bayley*, 126 Mich. 323. In this case it was held lawful for directors to advance money to the corporation with which to pay dividends, upon an understanding that such advancements were to be repaid from profits only, and that, if sufficient profits were not earned, repayment would never be made.

14. In *Lockhart v. Van Alstyne*, 31 Mich. 75-79, Justice Cooley said: "The declaration of a dividend is a most emphatic assertion that the corporation is in condition to make a division of profits, and is consequently enjoying some degree of prosperity. So generally is this understood that the making of a dividend when the capital must be encroached upon for the purpose, is looked upon as highly discreditable, if not absolutely dishonest and fraudulent, as involving an assertion

of prosperity which, under such circumstances, would be deceptive, and tending to give to the corporation a credit to which it is not entitled. The corporation which should make such a dividend would, when the facts became known, be condemned by the public sentiment, and the officers who should participate, would be looked upon as wanting in that business integrity which is essential to entitle them to public confidence. So forcibly has this been felt, that the legislature in providing for the formation of corporations has, in some cases, imposed penalties upon the corporate officers who participate in making dividends when the corporation is not in condition to warrant it; and this legislation is only an expression of the public sentiment, which condemns such action as unwise and misleading, and in every way impolitic."

15. "It is a well recognized principle of law, that directors of a corporation, and they alone, have the power to declare a dividend of the earnings of the corporation, and to determine its amount."—Chief Justice Champlin in *Hunter v. Roberts, Thron & Co.*, 83 Mich. 63.

16. *Lockhart v. Van Alstyne*, 31 Mich. 75-78.

In the absence of fraud or breach of trust, equity will not compel the declaration of a dividend¹⁷. After a dividend has been declared, mandamus does not lie to compel its payment¹⁸. Where the majority holders perpetrate a fraud upon the minority by wrongfully refusing to declare dividends out of a surplus not used or required in the corporate business, equity will afford a remedy¹⁹. Before filing a bill to compel official action, demand should be made upon the board of directors²⁰. But where it appears from the evidence that the demand would have been refused had it been made, the omission of demand will not be fatal²¹. Substantial rights are not dependent upon idle forms²².

Dividends, even though paid in good faith, may be followed by creditors and recovered from stockholders, where the capital stock has been impaired by the payment. Such impairment is a question of fact. Worthless or overvalued assets carried on the books, and there producing an apparent surplus as a matter of arbitrary accounting, afford no protection to stockholders. The question of impairment or non-impairment of assets is a question of substance, not of appearances, nor even of honesty of intent. Assets may not be divided among stockholders by way of dividends, unless the actual value of the property remaining equals the par value of the paid up capital stock²³.

17. "Courts of equity will not interfere in the management of the directors, unless it is clearly made to appear that they are guilty of fraud or misappropriation of the corporate funds, or refuse to declare a dividend when the corporation has a surplus of net profits, which it can, without detriment to its business, divide among the stockholders, and when a refusal to do so would amount to such an abuse of discretion as would constitute a fraud, or breach of that good faith which they are bound to exercise toward the stockholders."—Chief Justice Champlin in *Hunter v. Roberts, Throp & Co.*, 83 Mich. 63; See also *Cicotte v. Anciaux*, 53 Mich. 227-235.

18. *People v. Central Car Co.*, 41 Mich. 166.

19. *Phillips v. Jacobs*, 145 Mich. 108.

20. *LaGrange v. State Treasurer*, 24 Mich. 468-472.

21. *Hunter v. Roberts, Throp & Co.*, 83 Mich. 63.

22. *Donkersley v. Levy*, 38 Mich. 57.

23. *American Steel & Wire Co. v. Eddy*, 138 Mich. 403-408; *Id.* 130 Mich. 266; *Brewer v. Michigan Salt Ass'n*, 58 Mich. 351. In *American Steel & Wire Co. v. Eddy*, 138 Mich. 403-408, the following statement was made by Justice Hooker: "Whenever it is satisfactorily proved that the assets of a corporation are so reduced as to impair the capital, the creditors have a right to follow them into the hands of the stockholders to whom they have been paid as dividends, and who must be held to hold such assets as a trust fund for the benefit of creditors." Quoting with approval from the brief of counsel in *Richardson v.*

Capital stock may be paid up by way of stock dividends, that is, by adding net profits to the capital and issuing shares covering the increase²⁴. Stock dividends are legally unobjectionable, and are not uncommon. Dividends may also be paid in bonds or other property²⁵. As soon as declared, a dividend becomes a debt from the corporation to the stockholder, payable at a time fixed by the directors, or, if they fix no time, upon demand after a reasonable time for its voluntary payment has elapsed. Suit may be brought by the stockholder to enforce payment²⁶ and, if no fund has been set aside out of which payment is to be made, he is upon the footing of a general creditor. But if a fund has been segregated from the corporate assets for the purpose of paying a declared dividend, such fund is a trust fund and the stockholders are entitled to receive it, even as against creditors, in case the corporation subsequently becomes insolvent²⁷.

In the absence of an agreement to the contrary, the dividend belongs to the person who holds the stock at the time the dividend is declared. A transferee takes the dividends declared after transfer, though earned before, but he does not take dividends declared before transfer, though they may be payable thereafter²⁸. A pledge carries with it the right to dividends, and the pledgee is entitled to receive them whenever a transferee would enjoy a like right²⁹.

Where by provision of the charter, by-laws, or stock certificates, stock is transferable only upon the books of the company, the corporation is, in the absence of notice, protected in paying dividends to the proper registered holder—the person who, of

Buhl, 77 Mich. 632-649, Chief Justice Sherwood said: "The first thing to be done by any manufacturer who would ascertain his net earnings during the preceding year, is to take a careful inventory of what he has left, including his plant and machinery, and then make just and full allowance for all losses and shrinkages of every kind that he has suffered in his property during the year, and for all expenses of every kind, ordinary or extraordinary, that have occurred during the year, and, having made such inventory, and deducted such losses and shrinkage of every kind, his net earnings will be the difference between all his investments in his business and all

his expenses of every kind on the one hand, and this new inventory, with the reductions properly made, and all that he has received of every kind on the other hand; and if his books are properly kept, and proper deductions made, these net earnings will finally appear on the balance sheet to the credit of the profit and loss account."

24. Kryger v. Andrews, 65 Mich. 405.

25. Cook's Corp. 535.

26. Rumney v. Detroit & Montana Cattle Co., 129 Mich. 644.

27. Marshall's Corp. p. 725.

28. Cook's Corp. Sec. 539.

29. Marshall's Corp. p. 741.

record, held the stock at the date when the dividend was declared³⁰. But after receiving notice of an unregistered transfer, the corporation pays in disregard of the notice at peril. While the corporation may set off a declared dividend against a matured debt due from a stockholder³¹, it can not exercise such right of setoff against a joint liability due from the stockholder and another³², although if the liability were joint and several, it might do so³³.

§91. Liability for Labor Debts.

At common law the liability of the stockholder ended when he had paid par for his shares. In Michigan we have, in addition to the subscription liability³⁴, a general liability imposed by constitution³⁵, making the stockholders individually liable for all labor debts of the corporation. This liability is enforceable under the provisions of several of the enabling acts, and also under a general statute enacted for that express purpose³⁶. This liability is contractual, not penal³⁷, and is in the nature of a suretyship obligation³⁸. The liability for labor debts attaches to all who were stockholders at the time when the labor was performed³⁹, and a subsequent transfer of stock, even though made in good faith, does not defeat the liability⁴⁰, nor transfer it⁴¹.

To constitute the claim a labor debt, within the meaning of the state constitution and statutes, the service through which the obligation arose must have been wholly, or principally, manual labor⁴². Thus it has been held in this state that the services of

30. Cook's Corp. p. 538.

31. Marshall's Corp. p. 732.

32. Rumney v. Detroit & Montana Cattle Co., 129 Mich. 644.

33. Ferguson v. Millikin, 42 Mich. 441.

34. Sec. 70, Ante.

35. Beecher's Annotated Mich. Const. 1908, Art. XII, Sec. 4; Mich. Const. 1850, Art. XV, Sev. 7.

36. C. L. 1897, Sec. 8554, *et seq.* In the absence of an appropriate statute, the constitutional provision would be enforceable only in equity. Peck v. Miller, 39 Mich. 594-597.

37. Foster v. Row, 120 Mich. 1-23; Western National Bank v. Lawrence, 117 Mich. 669.

38. Voight v. Dregge, 97 Mich. 322. Because the relation is one of suretyship, extension of time to the

corporation by the holder of a labor claim releases the stockholders from liability, except as they consent to the extension. Hanson v. Donkersley, 37 Mich. 184; Powell v. Eldred, 39 Mich. 552; Kirkpatrick v. Mehalitch, 113 Mich. 631.

39. Macomber v. Wright, 108 Mich. 109-114; Voight v. Dregge, 97 Mich. 322.

40. Kamp v. Wintermute, 107 Mich. 635-639; O'Brien v. Fulkerson, 75 Mich. 554; Voight v. Dregge, 97 Mich. 322-324.

41. Kamp v. Wintermute, 107 Mich. 635-638.

42. Appeal of Clark, 100 Mich. 448. Clark was a traveling salesman. Occasionally he did some manual labor in adjusting machines sold by him. His general employment

a traveling salesman are not labor within the meaning of this law⁴³, nor are the services of a lumber inspector employed to inspect lumber and logs⁴⁴, nor the services of an assistant chief engineer⁴⁵, nor the services of persons employed in reporting, editorial work and proof-reading⁴⁶. But the services of an overseer and custodian of a mine⁴⁷, and of one who goes from place to place as a practical machinist engaged in directing and assisting in the installation of machinery⁴⁸, and of one employed as a mailing clerk⁴⁹, have been held to be labor within the protection of the law. Contractors and sub-contractors are not laborers. The fact that they employ laborers in the execution of work does not place their contract compensation upon the footing of a labor claim⁵⁰. Labor performed by a man's team is regarded as having been performed by the man himself⁵¹.

An order issued upon a store for payment of labor, does not carry with it the right to enforce the claim as a labor debt⁵². The assignee of a labor claim is, under the laws of Michigan, restricted to a special statutory provision for recovery⁵³. Our statutes, usually, if not invariably, provide that the assets of the corporation shall be first exhausted before liability for labor claims can be enforced against the individual stockholders. The laborer must become a judgment creditor, and the proceedings against the stockholders may be begun only after an execution has been duly issued and returned *nulla bona*. As between the parties, the sheriff's return is conclusive⁵⁴. In the absence of a statutory provision to the contrary, an execution issued out of Justice Court in a case where that court has exclusive jurisdiction, would be sufficient⁵⁵. The creditor is not bound to look beyond the county where the corporation's office is situated when he has obtained judgment in that county, although it may appear

was that of a sales agent. Held, that his claim was not for labor within the meaning of the statute.

43. Jones v. Avery, 50 Mich. 326.

44. Sayles' Petition, 92 Mich. 354.

45. Brockway v. Innes, 39 Mich. 47.

46. Michigan Trust Co. v. Grand Rapids Democrat, 113 Mich. 615-617.

47. McLaren v. Brynes, 80 Mich. 275-278.

48. Black's Appeal, 83 Mich. 513.

49. Michigan Trust Co. v. Grand Rapids Democrat, 113 Mich. 615.

50. Chicago & N. E. R. Co. v.

Sturgis, 44 Mich. 538; Peck v. Miller, 39 Mich. 594; Taylor v. Manwaring, 48 Mich. 171; In re Clark, 92 Mich. 351.

51. Chicago & N. E. R. Co. v. Sturgis, 44 Mich. 538-540.

52. Beecher v. Dacey, 45 Mich. 92.

53. Connors v. Carp River Iron Co., 54 Mich. 168; C. L. 1897, Sec. 8554, *et seq.*

54. Michels v. Stork, 52 Mich. 260.

55. Voight v. Dregge, 97 Mich. 322-325.

that the corporation had assets subject to execution in some other county⁵⁶. The constitutional liability for labor debts is in addition to all other liability which a member may have as a stockholder. Against it the legislature has no power to grant relief⁵⁷.

§92. Subscription Liability.

When a subscription has been fully paid, liability upon it, as upon any other fully executed contract, ceases⁵⁸. Until full payment has been made, the subscriber is liable, at least as to creditors, for the difference between the amount paid and the par value of the stock⁵⁹. To this rule we have hitherto noted one important exception, namely, that shares of a failing corporation may be sold at less than par for the purpose of paying creditors, and in that case the subscriber's liability is limited to the difference between the amount paid and the amount agreed to be paid⁶⁰. One who has loaned money to the corporation, but has taken for the loan stock absolute on its face, is liable as a stockholder⁶¹. So also is a pledgee who causes the pledged shares to be set over to him on the books of the company as an absolute transfer⁶².

A stockholder who has profited by his stock, or who has so conducted himself as to lead others to rely upon his apparent ownership, can not in a suit brought by creditors, escape liability on the ground that he was induced through fraud to become a

56. *Ripley v. Evans*, 87 Mich. 217-226.

57. *Milroy v. Spurr Mt. Iron Mining Co.*, 43 Mich. 231.

58. *American Mirror Co. v. Bulkley*, 107 Mich. 447-452.—In this case it was held that one who had paid up his entire subscription could not be held to any liability arising out of the fact that others had failed to subscribe or pay. In the absence of fraud, each stockholder is answerable for himself alone.

59. *Atlantic Dynamite Co. v. Andrews*, 97 Mich. 466. Unpaid subscriptions are assets in the hands of a trustee in bankruptcy, who may go into the state courts for their collection.—*Wood v. Sloman*, 150 Mich.

188; *Rouse, Hazard & Co. v. Detroit Cycle Co.*, 111 Mich. 251. Where a statute provides that a stockholder shall be individually liable for the debts of the corporation "to the amount of his capital stock therein," such statute is construed to impose upon the stockholder, over and above his investment, a liability equaling the par value of his stock.—*Kirkpatrick v. Bessalo*, 116 Mich. 657-660; *Pettibone v. McGraw*, 6 Mich. 440; *Kirkpatrick v. Costo*, 116 Mich. 662.

60. *Dummer v. Smedley*, 110 Mich. 466-477; *Handley v. Stutz*, 139 U. S. 417, 35 L. ed. 227.

61. *American Steel & Wire Co. v. Eddy*, 138 Mich. 403-409.

62. *Pauly v. Trust Co.*, 165 U. S. 606, 41 L. ed. 847.

stockholder⁶³, nor can incorporators who have paid up their subscriptions in property taken by the corporation at a fraudulent over-valuation escape liability by transferring their stock⁶⁴. In the absence of some agreement to the contrary, or some valid defense, a stockholder is, of course, liable to the corporation for the amount of his subscription. If the stock is sold for an assessment, leaving a deficit, the subscriber is liable for the deficiency⁶⁵. If there is doubt as to the liability or responsibility of a subscriber, the directors have power to effect a compromise settlement. Such settlement will be binding as between the corporation and the subscriber, but will not be operative against the rights of creditors⁶⁶.

When a partnership reorganizes as a corporation, and continues business under the same name, the fact of its changed status must be brought home to those who have formerly dealt with the partnership. Otherwise, as to such parties, the partnership liability will continue so long as they rely upon the partnership credit, in the absence of notice, or knowledge of sufficient facts to put them upon inquiry⁶⁷.

63. *Bissell v. Heath*, 98 Mich. 472; *Foster v. Row*, 120 Mich. 1-15; *Pauly v. Trust Co.*, 165 U. S. 606, 41 L. ed. 847.

64. In *McBryan v. Universal Elevator Co.*, 130 Mich. 111-122, Justice Grant said: "The question is. Can original incorporators make a false statement as to the amount of capital stock actually paid in, and escape liability for such false representations, immediately after executing the articles of association, by transferring their stock to other parties? The wrong was done by the original incorporators in making a false statement as to the amount of stock actually paid in. The public, and creditors dealing with the corporation, had the right to rely upon this statement as true. Subsequent purchasers of stock were also entitled to rely upon it as true. It would be unjust to visit the sins of the original incorporators upon subsequent stockholders who purchased in good faith. It would be a disgrace to the law if creditors, dealing

with the corporation in reliance upon these statements, which they examine in the public offices, where they are on file, had no remedy. Justice and good morals require that they who make such false statements, whether they make them intentionally or, as in this case, recklessly, should respond in damages therefor. The law does not permit them to evade this liability by a transfer of their stock." See also *Moore v. Universal Elevator Co.*, 122 Mich. 48.

65. *Merrimac Mining Co. v. Bagley*, 14 Mich. 501-504; *Carson v. Arctic Mining Co.*, 5 Mich. 288.

66. *Whitaker v. Grummond*, 68 Mich. 257; *Moore v. Universal Elevator Co.*, 122 Mich. 58-59.

67. *Edwards v. Wheeler's Estate*, 130 Mich. 219; *Tousignant v. Shafer Iron Co.*, 96 Mich. 87. A corporation does not become liable for the debts of a pre-existing partnership by the mere fact of becoming such partnership's successor. *McLellan v. Detroit File Works*, 56 Mich. 579-584.

CHAPTER X.

CORPORATE INSTRUMENTS.

- §93. Execution of Instruments.
- §94. Power to Execute.
- §95. Corporate Mortgages.
- §96. Bonds.

§93. Execution of Instruments.

A corporation must act through its officers and agents¹. When these proceed by proper authority they bind the corporation and not themselves². When they exceed their authority, they bind themselves and not the corporation, in the absence of estoppels³. Corporate instruments should be executed in the corporate name, thus :

DRAKE LAW BOOK COMPANY,
By F. S. DRAKE, President.

If, however, it fairly appears by the whole instrument that a corporate obligation was intended, the courts will not hesitate to give effect to the intent of the parties, even though that intent may be crudely and informally expressed⁴.

While, as we have seen⁵, execution by impressing the formal corporate seal upon the instrument is no longer necessary⁶, it is, even now, better to have important instruments so executed. As has been stated, the fact that the seal has been impressed upon the instrument is *prima facie* evidence of the due authority of the executing officer, and that the instrument is made by the corporation⁷.

Acknowledgment of corporate instruments may be with or without oath of the acknowledging officer. In any event, the acknowledgment should embrace a statement of official capacity

1. *Ismon v. Loder*, 135 Mich. 345-350.

2. *Hart v. Brockway*, 57 Mich. 189-193.

3. *Solomon v. Penoyer*, 89 Mich. 11.

4. *Regents v. Detroit Y. M. S.*, 12 Mich. 138; *Ismon v. Loder*, 135 Mich. 345-350.

5. Ante Sec. 18.

6. *Ismon v. Loder, Id.*; *Sarmiento v. Boat & Oar Co.*, 105 Mich. 300.

7. C. L. 1897, Sec. 10196.

and authority, and that the instrument is a corporate act. The effect of acknowledgment is to render the instrument self-proving⁸. Acknowledgment made under oath of the executing officer is the preferable form, and has the sanction of our statute⁹.

§94. Power to Execute.

As an incident of the general power inherent in corporations to deal with their property as a natural person might¹⁰, they may execute all instruments needful to make this general power effective. It can not be laid down that this officer, or that one, has authority in all cases to bind the corporation. Each instance must stand upon its own merits, and the power of the executing officer must be traced to express or implied authority, or to a ratification, or to some estoppel arising through a course of dealing¹¹.

Preferably the power should be expressly conferred—always so as to important transactions¹². Yet the haste and pressure

8. C. L. 1897, Sec. 10168. Acknowledgment is presumptive evidence of genuineness.—*Cameron v. Culkins*, 44 Mich. 531-533.

9. C. L. 1897, Sec. 9020.

10. In *Joy v. Jackson & Mich. P. R. Co.*, 11 Mich. 155-164, Justice Christiancy said: "As a general rule, corporations may, I think, be said to have an incidental power to dispose of their property real and personal, either by sale absolute, or by mortgage or other mode of security, for any debt which they may rightfully contract, to the same extent as natural persons, except so far as that power may be restrained by their charter, by considerations connected with the purpose of their creation, or limited by express provision or just implication of some statute, or by the general policy of the state to be deduced from its legislation."

11. *Wing v. Commercial Bank*, 103 Mich. 565; *Chamberlain v. Detroit Stove Works*, 103 Mich. 124.

12. Where an issue of negotiable bonds is to be secured by mortgage, the utmost caution should be observed in having every statutory re-

quirement met, and every power definitely conferred and expressed. It is not that the bonds or mortgage would be invalid if less formally authorized; these precautions are enjoined because informalities impair the salability of the securities. Large purchasers will be found extremely critical, and no investment from them need be expected, unless an unimpeachable record of preliminary steps can be produced. Not only should the corporate records affirmatively show that the authorized meetings were held pursuant to due notice properly given, but they should as well set forth resolutions stating in substance, if not in form, the precise terms of the mortgage and bonds authorized. Under statutes giving the directors full control of the prudential affairs of the corporation, it is not necessary, in the absence of charter or by-law provisions requiring it, to have the action of the board of directors authorized or ratified by the stockholders. Yet, where this can be accomplished without great inconvenience, and where the action of the stockholders will be unanimous, it is

of business often finds convenience and expediency substituted for caution and safety. There is little doubt that a majority of corporate instruments are supported by principles of estoppel, rather than by definite authority. In recognition of this fact, informalities are rarely permitted to defeat justice. Thus, where mortgages of corporate property have been executed without duly called meetings or proper resolutions conferring authority upon the executing officers, such mortgages are, nevertheless, held valid, if made with the knowledge and consent of all of the stockholders¹³.

§95. Corporate Mortgages.

In the absence of a restraining statute or by-law, full power to mortgage all or any of the corporate property for corporate purposes is vested in the board of directors¹⁴. The power should be exercised by means of a regularly called meeting. A meeting at which all directors are present and in which all participate without objection, will be sufficient, however called¹⁵. But less than all of the members cannot assemble, without due notice to the others, and bind the corporation by a mortgage thus irregularly authorized¹⁶.

A favorite method of gaining time in which to meet urgent obligations, is by means of a trust mortgage upon all of the corporate property for the benefit of creditors. Such an instrument is, of course, made only as a last resort to stay impending disaster. If the corporation is *solvent*, preferences may be given without immediate danger of successful interference by a court of bankruptcy¹⁷. If, however, these preferences are unjust,

best to secure their assent. The fact that a bond issue has the united approval of all members of the company is well calculated to afford investors additional confidence and encouragement. For the same reason it is well, upon approaching prospective investors, to place them in possession of such certified copies of records as will indicate to them, not only that the action authorizing the bonds was regular, but also that the issue has been painstakingly prepared by competent counsel. While these precautions do not necessarily insure the success of a floatation, their absence will be found to exert a po-

tent influence in defeating it.

13. Kalamazoo Spring Co. v. Winans & Co., 106 Mich. 193-198; Eureka Iron & Steel Works v. Bresnahan, 60 Mich. 332.

14. Crossette v. Jordan, 132 Mich. 78-81; Boynton v. Roe, 114 Mich. 401-407.

15. Crossette v. Jordan (ante). Eureka Iron & Steel Works v. Bresnahan, 60 Mich. 332; Kalamazoo Spring Co. v. Winans, 106 Mich. 193-198.

16. Broughton v. Jones, 120 Mich. 462.

17. National Bankruptcy Act of 1898, Sec. 3.

creditors may ignore or repudiate the mortgage, and proceed to enforce their claims. The temptation to do this is materially modified by the fact that the mortgage will, if valid, remain in force for the benefit of those who choose to be bound by its terms. While dissenting creditors may levy upon the corporation's equity in the mortgaged property, the secondary lien thus gained is usually less desirable than the security afforded by the mortgage. The levy may be cut off altogether by foreclosure of the mortgage, and the proceeds of the foreclosure sale, if not exceeding the mortgage indebtedness, will be divided *pro rata* among the assenting creditors, leaving nothing for those who have repudiated the mortgage security¹⁸. If the corporation is insolvent, a mortgage creating preferences is an act of bankruptcy¹⁹. Even in these cases, if the terms of the mortgage are reasonable, it is likely to go unassailed. Liquidation through foreclosure is frequently preferable to liquidation through bankruptcy.

A mortgage to a trustee for the benefit of creditors, where the instrument does not place control of the property, power of sale, and right to make distribution, in the hands of the trustee (except as such rights and powers may be gained by judicial decree) does not amount to a common law assignment, and is valid, under the laws of Michigan, even though it protects some of the creditors to the exclusion of others²⁰. But a so called mortgage which divests the corporation of its property without right of redemption, and places the same in the hands of a trustee with full power to continue, or to close out, the business, and to distribute its proceeds, giving preferences, amounts to a common law assignment, and is void as to creditors²¹.

The doctrine that a debtor may give a mortgage upon property to be afterwards acquired is recognized in Michigan. Thus a trust mortgage covering all of the corporation property including "all improvements thereon and additions thereto of every name

18. *Alliance Milling Co. v. Eaton, Guinan & Co.*, 86 Tex. 401, 24 L. R. A. 369, and notes. See also *Tuttle v. Vanleer*, 89 Tex. 174, 37 L. R. A. 337, and notes.

19. National Bankruptcy Act of 1893, Sec. 3.

20. *Longley v. Hosiery Co.*, 128 Mich. 194; *Austin v. First National Bank*, 100 Mich. 613; *Bank of Montreal v. Salt & Lumber Co.*, 90 Mich.

345-351; *Warner v. Littlefield*, 89 Mich. 329; *Sheldon v. Mann*, 85 Mich. 265; *Town v. Bank of River Raisin*, 2 Doug. (Mich.) 530.

21. *Conely v. Collins*, 119 Mich. 519-521; *Hill v. Mallory*, 112 Mich. 387; *Pettibone v. Byrne*, 97 Mich. 85; *Burnham v. Haskins*, 79 Mich. 35; *Kendall v. Bishop*, 76 Mich. 634; *Tuttle v. Vanleer*, 89 Tex. 174, 37 L. R. A. 337.

and nature whatsoever," covers all after acquired property, including new special franchises²². It has been held in this State, that a corporation may mortgage or sell its franchises, as its other property, and the purchaser at sale, or upon foreclosure, becomes vested with all of the rights so conveyed²³, subject to the same obligations that were imposed upon them in the hands of the vendor corporation²⁴. A mortgage given to secure a valid debt, and recognized as valid by the corporation, cannot be impeached, even by a judgment creditor, on the ground that it does not conform to the terms of the resolutions authorizing it²⁵. Where a mortgage is executed to a director to secure him for a *bona fide* indebtedness owed him by the corporation, and is in good faith foreclosed upon default, such director may bid in the corporate property at the foreclosure sale, provided he does so openly and fairly²⁶.

22. *Lewis v. Weidenfeld*, 114 Mich. 580-591; *Preston National Bank v. Purifier Co.*, 84 Mich. 364-387; *Fuller v. Rhodes*, 78 Mich. 36; *Eddy v. McCall*, 71 Mich. 497; *Robson v. Mich Central R. Co.*, 37 Mich. 70; *American Cigar Co. v. Foster*, 36 Mich. 387; *Leland v. Collver*, 34 Mich. 418.

23. *City of Kalamazoo v. Power Co.*, 124 Mich. 74-83; *Michigan Telephone Co., v. St. Joseph*, 121 Mich. 502-509; *Detroit v. Mutual Gas Light Co.*, 43 Mich. 594-599; *Joy v. Jackson & Mich. P. R. Co.*, 11 Mich. 155-163; C. L. 1897, Sec 8572, 8573. In *Joy v. Jackson & Mich. P. R. Co.* (ante). Justice Christancy said: "All the several rights and powers conferred by the charter may, I think, be treated as so many different franchises, some of which are essential to the existence of the corporation while others are not. Those which are essentially corporate franchises, without which the corporation could not exist, and which are, in their nature, incapable of being vested in, or enjoyed by, a natural person—such as the right or franchise of being a corporation, of having corporate succession, etc.—can not be made the subject of sale

or transfer, without a positive provision of statute, giving the authority and pointing out some mode in which such transfer may be effected, as this would be allowing the corporation 'to transfer its corporate existence into another body'—to create a new corporation, which is an act of the sovereign power only to be performed by the legislature. The franchise, also, of taking private property for the use of a road, though not perhaps necessarily a corporate right, yet being an exercise of the right of eminent domain, and to be exercised only by the officers, and in the manner specified in the charter, may also require positive legislative authority for its transfer."

24. *Township of Grosse Pointe v. Detroit, etc., Ry.* 130 Mich. 363; *Michigan Telephone Co. v. St. Joseph*, 121 Mich. 502-509; *Detroit v. Mutual Gas Light Co.*, 43 Mich. 594-599.

25. *Citizens State Bank v. McGraft Lumber Co.*, 122 Mich. 573; *Beecher v. Marquette & Pacific R. M. Co.*, 45 Mich. 103; *Thomp. Corp. Sec. 6165*.

26. *Lucas v. Friant*, 111 Mich. 426-436.

§96. Bonds.

Unless restricted by charter, a corporation may issue its negotiable bonds for the purpose of raising money for corporate objects. The price at which these bonds may be sold, and the uses to which they may be put if not sold, have given rise to some questions which have been settled in this State by judicial authority. A corporation may issue and sell its bonds at a discount for the purpose of paying debts, unless prevented by statute. If the selling price is such as to make the transaction usurious, the sale may be enjoined at the instance of any stockholder whose interests are in peril. To secure this injunctive relief a clear case of imminent and certain injury must be established²⁷. Usurious bonds are enforceable in the hands of *bona fide* purchasers²⁸. Where the bonds of a corporation were issued upon an understanding that they were to be sold for cash only, no one but a stockholder, or the corporation, could object to the fact that the bonds were pledged as collateral to secure a loan for the company, instead of being sold as contemplated. If the corporation received value for the pledge, it would be estopped to deny the regularity of the transaction, and participating or assenting stockholders would be likewise estopped²⁹.

27. *Fletcher & Sons v. Circuit Judge*, 136 Mich. 511; *Gamble v. Queen's County Water Co.*, 123 N. Y. 91; 9 L. R. A. 527. In this case Justice Peckham made the following statement: "To warrant the interposition of the court in favor of the minority stockholders.....as against the contemplated action of the majority where such action is within the corporate powers, a case must be made out which plainly shows that such action is so far opposed to the true interest of the corporation itself as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests, but that he must have acted with an intent to subserve some

outside purpose, regardless of the consequences to the company and in a manner inconsistent with its interests. Otherwise the court might be called upon to balance probabilities of profitable results to arise from the carrying out of the one or the other of different plans proposed by or on behalf of different shareholders in a corporation, and to decree the adoption of that line of policy which seemed to it to promise the best results, or at least to enjoin the opposite policy. This is no business for any court to follow."

28. *Fletcher & Sons v. Circuit Judge*, 136 Mich. 513.

29. *Beecher v. Marquette & Pacific R. M. Co.*, 45 Mich. 103.

CHAPTER XI.

CHANGES IN THE CORPORATE ENTITY.

- § 97. How Changes May be Effected.
- § 98. Amendment and Repeal by the State.
- § 99. Amendment by the Stockholders.
- §100. Consolidation.
- §101. Dissolution.

§97. How Changes May be Effected.

Changes in the corporate entity may be effected through amendment or repeal of the enabling statute, or through amendment of the articles of association, or by dissolution.

§98. Amendment and Repeal by the State.

Under its reserved right, the legislature has full power to repeal any statute of this state conferring rights, privileges, or franchises upon private corporations¹. An amendment or a repeal can not divest the corporation of such property rights as might exist independently of the charter; but the corporation may be stripped of its corporate powers and franchises, and of the right to continued existence². When a statute has been repealed, its force is at an end. The powers which it conferred cease to have legal authorization³.

1. Mich. Const. 1908, Art. XII, Sec. 1 and Beecher's notes.

2. For a case carrying the power of amendment to the verge of an impairment of vested rights see *Attorney General v. Looker*, 111 Mich. 498, affirmed in *Looker v. Maynard*, 179 U. S. 44, 45 L. ed. 79. In this case it was held that a general law authorizing cumulative voting, did not impair vested rights. See also *Detroit v. Detroit & Howell R. Co.*, 34 Mich. 140.

3. "One obvious effect of the repeal of a statute is that it no longer exists. Its life is at an end. Whatever force the law may give to transactions into which the corpora-

tion entered and which were authorized by the charter while in force, it can originate no new transactions dependent on the power conferred by the charter. If the corporation be a bank, with power to lend money and to issue circulating notes. it can make no new loan nor issue any new notes designed to circulate as money." "If the essence of the grant of the charter be to operate a railroad, and to use the streets of the city for that purpose, it can no longer so use the streets of the city, and no longer exercise the franchise of running a railroad in the city. In short, whatever power is dependent solely upon the grant

It has been repeatedly asserted in this state that repeals by implication are not favored. The repealing statute must either avow its purpose expressly, or its provisions must be so clearly repugnant to the prior law that the two can not exist together⁴.

§99. Amendment by Stockholders.

The charter contract is as binding upon the corporation as upon the State. Changes in the charter may be made only by the State's permission. If the power of amendment is not granted, it does not exist. In Michigan the right to amend the articles of association is vested in the stockholders by many of the enabling acts, as well as by the provisions of a broad, general law⁵. The corporate name, objects, capital stock, classes of stock, number and par value of shares, as well as the location and duration of the company, and other incidents of the articles may be amended by the prescribed vote of the stockholders; the only limitations being, that no vested property rights shall be impaired, and that the articles of association, after amendment, shall not be otherwise than they might have been in the first instance.

It has been argued that this exercise of amendatory power by the majority stockholders is, or may be, in the nature of an impairment of the contractual rights of the minority. It has been urged that a change in the purposes of the organization is a diversion of the corporate funds from the object for which

of the charter, and which could not be exercised by unincorporated private persons under the general laws of the state, is abrogated by the repeal of the law which granted these special rights." "Personal and real property acquired by the corporation during its lawful existence, rights of contract, or choses in action so acquired, and which do not, in their nature, depend upon the general powers conferred by the charter, are not destroyed by such a repeal, and the courts may, if the legislature does not provide some special remedy, enforce such rights by the means within their power."—Justice Miller, in *Greenwood v. Union Freight R. R. Co.*, 105 U. S. 13, 26 L. ed. 961.

4. *Tillotson v. City of Saginaw*, 94 Mich. 240; *Hoffman v. H. M.*

Loud & Sons Lumber Co., 138 Mich. 5; *Connors v. Carp River Iron Co.*, 54 Mich. 168; *People v. Grand Rapids & W. P. R. Co.*, 67 Mich. 5.

5. C. L. 1897, Sec. 8533, Am. Act 176 Pub. Acts 1901, p. 251; Act 317 Pub. Acts 1905, p. 495. Under this statute it has been held that a non-stock corporation having power to hold property may amend its articles so as to create a capital stock divided into transferable shares.—*Detroit Chamber of Commerce v. Secretary of State*, 109 Mich. 691; *People v. Plainfield Ave. Gravel Road Co.*, 105 Mich. 9. Where amendment is unauthorized by the enabling act, it may be made under this general statute.—*Great Hive L. O. T. M. v. Supreme Hive*, 129 Mich. 324-334.

they were originally invested. A complete answer to this objection is, that every member of the corporation has impliedly consented to all of the provisions of the charter, including the right of the majority to amend, and, having thus consented, the right to object is waived.

The general power of amendment is unquestionably beneficial, and its exercise is rarely detrimental to minority interests. The necessity for the power springs from the fact that it is impossible, at the outset, to foresee and provide for all of the conditions which may afterwards arise through the development of the corporate enterprise. An authorized capital that would be ridiculous or impossible in the first instance, often becomes essential by reason of the growth of the company. Objects foreign to the original intent often become material through the merest accidents of invention, or through the varying circumstances of competition and trade. The creation of a class of preferred stock with such advantages that it will command a market may be found indispensable to the continuance of corporate solvency. Liberal power of amendment simply enables corporations to do what natural persons might do under like circumstances—to adapt themselves to new conditions as new conditions arise. Were it not for this power, the sole remedy would be by way of dissolution of the old company and organization of a new one, at the cost of delays and sacrifices.

When a corporation in good faith makes an ineffectual effort, under a valid permissive law, to amend its articles of association, the rights that would have been conferred had the amendment been regular, become *de facto* rights of the company. The state alone can complain of the irregularity⁶. A *de facto* corporation has no power to amend its articles of association. The benefits of amendment laws are intended for *de jure* corporations only⁷.

Under a statute permitting amendments extending or diminishing the corporate duration, it is possible to bring the corporate life to an abrupt close by an amendment reducing the period of corporate existence.

§100. Consolidation.

A consolidation of corporations is a legalized combination of the property and franchises of two or more incorporated com-

6. *Hoeft v. Kock*, 123 Mich. 171.

7. *Continental Paint Co. v. Secretary of State*, 128 Mich. 621-626.

panies, effected either by creation of a new corporation, or by continuation of an old one, in which the assets of the consolidating companies are merged. The absorbed companies are designated as "the consolidating corporations." The continuing company is known as "the consolidated corporation."

The state has power to authorize consolidations⁸. This power has been exercised in Michigan by the enactment of several statutes enabling consolidations⁹. The proceedings incident to a consolidation are purely statutory, and the statute should be strictly pursued. A colorable consolidation, made in good faith under a valid law imperfectly followed, may give rise to a *de facto* consolidation. Those who have recognized the *de facto* consolidated corporation by dealing with it are not permitted to attack its validity. The state alone can complain¹⁰. It has been repeatedly held however, that in the absence of an estoppel, nothing less than a *de jure* consolidation will support a proceeding brought by the consolidated company to enforce stock subscriptions made to the absorbed corporations¹¹.

In the absence of a statutory provision making the consolidated corporation liable for the obligations of the absorbed companies, the naked fact of consolidation does not establish such liability. Proof of something more is necessary¹². Liability may be fastened upon the consolidated corporation by,

8. State Treasurer v. Auditor General, 46 Mich. 224-232.

9. C. L. 1897, Sec. 8572-8573. It is held that this statute is inapplicable to foreign corporations. Dieterle v. Ann Arbor Paint & Enamel Co., 143 Mich. 421. As to the consolidation of railroad companies, see Act No. 30, Public Acts 1901, p. 50.—As to consolidation of street railways, electric light and gas light companies, see Act. 33 Pub. Acts 1907, p. 35; Act 61 Pub. Acts 1903, p. 81; Act 50 Pub. Acts 1903, p. 64; Act 128 Pub. Acts 1899, p. 178.

10. Shadford v. Detroit, etc. Ry., 130 Mich. 300-305; Niles v. Benton Harbor, etc. R. Co., 154 Mich. 378-381; Swartwout v. Michigan Air Line R. Co., 24 Mich. 388-392.

11. Peninsular Ry. Co. v. Tharp, 28 Mich. 505-506; Mansfield, Coldwater & L. M. R. Co. v. Drinker, 30 Mich. 124-126; Wells v. Rodgers, 60 Mich. 525; See also Brown v. Estate

of Dibble, 65 Mich. 520.

12. In Chase v. Michigan Telephone Co., 121 Mich. 631-634, Chief Justice Grant states the law as follows: "The law is well settled in regard to liability of the consolidated or purchasing corporation for the debts and liabilities of the consolidating or selling corporation. Such obligations are assumed (1) when two or more corporations consolidate and form a new corporation, making no provision for the payment of the obligations of the old; (2) when by agreement, express or implied, a purchasing corporation promises to pay the debts of the selling corporation; (3) when the new corporation is a mere continuance of the old; (4) when the sale is fraudulent, and the property of the old corporation, liable for its debts, can be followed into the hands of the purchaser." See also Grenell v. Ferry, 110 Mich. 262.

- (a) Proof that such liability has been assumed¹³, or
- (b) Proof that no provision has been made¹⁴ for payment of the debts of the consolidating corporations, or
- (c) Proof that the new corporation is but a continuation of the old one in a new form¹⁵, or
- (d) Proof that the transfer to the new corporation was fraudulent¹⁶.

In any of these cases, the consolidated corporation will be liable for obligations of the absorbed concerns, whether such obligations arose *ex contractu* or *ex delicto*¹⁷.

Where a corporation is absorbed by consolidation, under circumstances which make the consolidated corporation liable for the consolidating company's debts, it is immaterial that the absorbed company was insolvent. *The continuing corporation must bear the burdens imposed by its improvident bargain*¹⁸. It seems that where the consolidating corporation continues undissolved, suit may be brought, primarily, against it for its own obligations¹⁹. When judgment has been recovered, and an execution has been issued and returned *nulla bona*, a creditor's bill will lie against the consolidated company if the circumstances are such that it is liable²⁰. Where, at the time of commencement of suit, the consolidation has been effected, the action may be brought directly against the consolidated corporation²¹. Under such circumstances, the declaration should allege, and the proof should establish, such facts as will fix the liability upon the continuing corporation²². When two or more corporations

13. Rehberg v. Tontine Surety Co., 131 Mich. 135; Kobogum v. Jackson Iron Co., 70 Mich. 498-504.

14. Grenell v. Detroit Gas Co., 112 Mich. 70. Where a corporation buys out a partnership and assumes its obligations, the corporation may be held liable.—Piette v. Bavarian Brewing Co., 91 Mich. 605-611.

15. Chase v. Mich. Tel. Co., 121 Mich. 631.

16. Grenell v. Ferry, 110 Mich. 262.

17. Howell v. Lansing & Suburban Traction Co., 146 Mich. 450; Rheberg v. Tontine Surety Co., 131 Mich. 135-138; Shadford v. Detroit etc. Ry., 130 Mich. 300; Grennell v. Detroit Gas Co., 112 Mich. 70; Batterson v. Chicago & Grand Trunk Ry Co., 53 Mich. 125-127; Chicago

M. & St. P. R. Co. v. Third National Bank, 134 U. S. 276; 33 L. ed. 900.

18. Shadford v. Detroit etc. Ry. Co., 130 Mich. 300-307.

19. Thomson v. McMorran Milling Co., 132 Mich. 591-599.

20. Turnbull v. Prentiss Lumber Co., 55 Mich. 387; Grenell v. Ferry, 110 Mich. 262.

21. Howell v. Lansing & Suburban Traction Co., 146 Mich. 450; Shadford etc. v. Detroit Ry. Co., 130 Mich. 300; Niles v. Benton Harbor, etc. R. Co., 154 Mich. 378; Chicago & Indiana Coal R. Co. v. Hall, 135 Ind. 91, 23 L. R. A. 231, and notes.

22. Howell v. Lansing & Suburban Traction Co., 146 Mich. 450; Marquette, Houghton & Ontonagon R. Co. v. Langton, 22 Mich. 250. In

merge, so that the identity of the original company is lost, the merger amounts to a breach of existing contracts of employment between the absorbed companies and their employees. This result arises from the fact that an employee can not be compelled to consent to the substitution of a master not of his own choice²³. When authorized by statute, a domestic corporation may consolidate with a foreign corporation, but the domestic corporation remains domestic, and the foreign corporation remains foreign, and concert of action, not unity of being, is all that is accomplished by the consolidation²⁴.

§101. Dissolution.

It was early held that an assignment for the benefit of creditors operated as the surrender of the charter²⁵. But it is now well established that this view was erroneous, and that neither an assignment, nor bankruptcy, nor any act other than the expiration of the charter, or a judicial dissolution, can end the corporate life²⁶.

Termination may be by limitation or by dissolution. When the corporate period has expired, and no valid reorganization or extension has been accomplished, the corporation is at an end²⁷. It is incapable of longer exercising corporate functions, except for the purpose of winding up its business, paying its obligations, and distributing the net residue of its estate among the stockholders²⁸. The mere fact that the corporation continues

the case last cited Justice Campbell said: "While our laws subject consolidated companies to the obligations of their constituents, the consolidation creates a new, distinct corporation and any declaration against this for an old cause of action should state against what company it arose, and aver such facts as will subject the new company to be sued upon it."

23. *Globe & Rutgers Fire Ins. Co. v. Jones*, 129 Mich. 664-668.

24. *Chicago & North Western Ry. Co. v. Auditor General*, 53 Mich. 79.

25. *Bank Commissioners v. Bank of Brest*, Harr. Chan. (Mich.) 106.

26. *People v. Bank of Pontiac*, 12 Mich. 526-537.

27. *Negaunee Iron Co. v. Iron Cliffs Co.*, 134 Mich. 264-278;

Brown v. Mining Co., 105 Mich. 653-657. Equity will enjoin the threatened acts of those who assume to act in the name of a defunct corporation.—*Negaunee Iron Co. v. Iron Cliffs Co.*, (Id.)

28. *Mason v. Perkins*, 73 Mich. 303-319. By statute a corporation, however terminated, has three years in which it may continue for the purpose of gradually winding up its affairs.—C. L. 1897, Sec. 8534. Whether, after dissolution, a corporation retains the exclusive right to the use of its corporate name during the three-year period allowed by statute for the gradual settlement of the company's affairs, is a question that has been raised, but is undecided.—*People v. Sticky Fly Paper Co.*, 144 Mich. 221-231. The name is properly in the nature of a com-

to exercise franchises without objection by the State does not alter the company's legal status. Corporate life can not be extended by waiver²⁹.

When the life of a private corporation ends, its assets, after payment of creditors, belong to its stockholders. In a corporation having assets, but no capital stock, the net amount upon termination of the corporation is, in equity, the property of its members, and does not escheat to the State³⁰. Where a corporation, for any reason, is wholly unable to further carry on its purposes or attain its objects, the directors are charged with the duty of having the organization dissolved in equity. Should they be guilty of unreasonable neglect or delay in so doing, anyone having an interest in the corporate property may institute the proceedings³¹.

mon law trade mark.—Lamb Knit-Goods Co. v. Lamb Glove & Mitten Co., 120 Mich. 159. Moreover, it is a kind of property that may exist as well in the absence, as in the presence, of incorporation. It is assignable with the good will and established business of the company, of which it forms a part. The three years' grace is conferred to enable the corporation to remain active during the whole period of its corporate life, and then to gradually close its affairs without the sacrifices incident to forced sales. To hold that, by delaying liquidation until expiration of its charter, the corporation sacrifices an asset whose existence might continue independent of the charter, would seem to be without the support of reason, and would certainly defeat, in part, the benevolent purpose of the law. In *Bewick v. Alpena Harbor Co.*, 39 Mich. 700, Chief Justice Campbell, recites the history of this statute and states its principal object as follows: "The object of this clause was not to limit, but to enlarge, the corporate privileges, so that a corporation whose existence was nearing its end might enjoy the advantages of doing general business during the whole charter period, instead of being compelled to wind up its affairs before it ended."

29. *Grand Rapids Bridge Co. v.*

Prange, 35 Mich. 399-405.

30. *Hopkins v. Crossley*, 138 Mich. 561-566; *Id.*, 132 Mich. 612.

31. In *Miner v. Belle Isle Ice Co.*, 93 Mich. 97-112 Justice McGrath made the following statement: "It has been held that, when it turns out that the purposes for which a corporation was formed cannot be attained, it is the duty of the company to wind up its affairs; that the ultimate object of every ordinary trading corporation is the pecuniary gain of its stockholders; that it is for this purpose, and no other, that the capital has been advanced; and if circumstances have rendered it impossible to continue to carry out the purpose for which it was formed with profit to its stockholders, it is the duty of its managing agents to wind up its affairs." See also *Stamm v. Northwestern etc. Assn.*, 65 Mich. 317; *C. H. Little Co. v. Cemetery Association*, 135 Mich. 248-253; *Brown v. Mining Co.*, 105 Mich. 653. In *Stamm v. Mutual Benefit Association* it was held that, where a corporation has net assets but no capital stock, the assets will be divided, upon dissolution, *pro rata* among those who were members at the time the corporation finally ceased to exercise its corporate functions. The legal representatives of those who have died since that occurrence stand in the stead of such decedent members.

Dissolution must be in accordance with legislative permission expressed in the charter, or in the general laws of the State³². In the absence of the statutory reasons hereinafter considered, a majority can not force dissolution upon a minority, except through exercise of the power of amendment by way of reducing the term of corporate existence. It is clearly beyond the power of a majority of the stockholders to wind up the affairs of the company by exchanging its property for the shares of another corporation. Minority stockholders can not be compelled to accept such stock against their will, and the dissent of a single stockholder will overthrow the transaction³³.

In Michigan there is a general statute regulating dissolutions³⁴. The provisions of this statute are substantially as follows:

(a) A majority of the directors, upon finding the corporation insolvent, or about to become insolvent, or otherwise unable to longer carry out its corporate purposes advantageously, may go into equity by sworn petition praying dissolution³⁵.

(b) The petition must contain

- I. An inventory of all assets,
- II. A statement of the names, residences and holdings of each stockholder, and of the amount sub-

32. *Calkins v. Bump*, 120 Mich. 335-342; *Town v. Bank of River Raisin*, 2 Doug. (Mich.) 530.

33. *Emery v. Construction Co.*, 132 Mich. 560; *Mason v. Pewabic Mining Co.*, 133 U. S. 50, 33 L. ed. 524. The latter case was an appeal from the Circuit Court of the United States for the Western District of Michigan, and affords a striking example of the injury which might arise to minority holders if the majority had power to exchange corporate assets for stock in a new company. By vote of 27,919 shares against 6,754 shares, resolutions, in substance as follows were adopted: "Resolved that the board of directors be authorized to sell and dispose of the property of the company for a sum not less than \$50,000 "Resolved that the property shall be sold to a new corporation organized on the basis of 40,000 shares (the same as

the antecedent company) and that the stockholders receive an equal number of new shares in exchange for their old shares or, that any stockholder may receive his pro rata share in money." Sale was made to the new company at a price of \$50,000, and an offer was made to settle with dissenting stockholders in cash on the basis of that valuation. The effect of this was that the majority holders of the original company arrogated to themselves the right to compel a sale to themselves at a price fixed by themselves. If the injustice of such a proceeding required any illustration, it would be found in the fact that the property in this case, valued by the directors at \$50,000, was ascertained by the master in chancery to be worth \$498,412.24.

34. C. L. 1897, Chap. 300. Sec. 10855, et seq.

35. C. L. 1897, Sec. 10852, 10854.

scribed, and of the amount paid in, and of the amount remaining unpaid, by each of them,

III. A statement of encumbrances,

IV. A list of debtors and creditors, with amounts of debits and credits³⁶.

(c) An order to show cause before a master in chancery why dissolution should not be decreed must be entered and published³⁷.

(d) If the master's report shows it desirable, dissolution will be decreed and a receiver will be appointed³⁸.

(e) Any officer, director, or stockholder may be appointed as receiver with power to collect the assets, including unpaid subscriptions³⁹.

(f) The estate is to be distributed as follows:

I. Debts entitled to preference under the laws of the United States,

II. Executions actually levied, to the extent of the property levied upon, and according to priority,

III. Special deposits,

IV. General creditors.

V. Stockholders⁴⁰.

It is a familiar principle, that upon dissolution, creditors are to be first paid. Assets prematurely distributed to stockholders may be followed and recovered⁴¹. A creditor having neither a judgment nor a lien upon the property of the corporation, can not complain of the distribution of that property, unless he is authorized by statute to do so. The doctrine that creditors of

36. C. L. 1897, Sec. 10853.

37. The order to show cause is in the nature of substituted service and must conform strictly to the terms of the statute.—Taft v. Chapel, 146 Mich. 115.

38. C. L. 1897, Sec. 10859. The statute of limitations runs against unpaid subscriptions from the date of the appointment of the receiver.—Webber v. Hovey, 108 Mich. 49.

39. Receivers are entitled, in addition to their actual disbursements, to receive such commissions as the court may allow, not exceeding the sum allowed by law to executors and administrators. The commission basis is as follows: 5% on the first \$1,000 collected, 2½% on

all sums collected above \$1,000 up to \$5,000, 1% on all sums collected in excess of \$5,000, \$1 per day for time employed. *Also such additional amount as the court may allow for extraordinary services.* For a case where a compensation of \$125 per month was allowed, see in re Angell, 131 Mich. 345-351. In our Supreme Court the tendency is to affirm the allowance made by the court of first instance. "No one is in a position to know what allowance should be made so well as the court appointing the receiver."—In re Angell Id.

40. C. L. 1897, Sec. 10873, 10877.

41. Brewer v. Mich. Salt Ass'n, 58 Mich. 351-355; Id. 47 Mich. 526.

an insolvent corporation have an equitable lien upon its assets is expressly repudiated in Michigan⁴².

A corporation may be dissolved upon bill or petition of the attorney general, or at the instance of any creditor, or of any director, trustee or other managing officer⁴³ whenever it shall appear that the company has been continuously insolvent during one year, or when the company has neglected or refused to pay its debts during a like period⁴⁴. To enable a creditor to take advantage of these statutory provisions, he must be a *judgment* creditor⁴⁵.

Where, in a *quo warranto* proceeding, it is found that the corporation defendant has forfeited its rights through misuser, non-user, or through insolvency⁴⁶, or by non-payment of debts for a period of one year⁴⁷, judgment may be rendered that the corporation be ousted from its rights, privileges and franchises, and that it shall be absolutely dissolved⁴⁸.

42. McKee v. City Garbage Co., 140 Mich. 497; O. W. Shipman Co. v. Detroit etc. Ry. Co., 140 Mich. 589; Bank of Montreal v. Lumber Co., 90 Mich. 345.

43. C. L. 1897, Sec. 9759. But the insolvency of a corporation is not ground for a suit in equity by a stockholder to wind up its affairs.—Heap v. Heap Mfg. Co., 97 Mich.,

147; Fuller v. McCormick, 16 D. L. N. 195 (May, 1909.)

44. C. L. 1897, Sec. 9762.

45. McKee v. City Garbage Co., 140 Mich. 497.

46. People v. Sticky Fly Paper Co., 144 Mich. 221.

47. C. L. 1897, Sec. 9762.

48. C. L. 1897, Sec. 9961.

CHAPTER XII.

ACTIONS AND PROCEDURE APPLICABLE TO CORPORATIONS.

- §102. Status.
- §103. Abatement of Actions by Dissolution.
- §104. Commencement of Suits.
- §105. Return of Officer.
- §106. Waiver of Irregularity.
- §107. Statutory Proceedings Against Stockholders.
- §108. Quo Warranto.
- §109. Mandamus.
- §110. Bankruptcy.
- §111. Remedies in Equity.
- §112. Receivers.
- §113. Executions.
- §114. Evidence.

§102. Status.

It is the settled policy of the law in this State to deal with corporations, as nearly as may be, as though they were natural persons. Again and again in statutes and decisions, this policy has been announced¹. It is applied in full force to proceedings by and against corporations in courts of justice. Often at the expense of public criticism, these tribunals have steadfastly declined to be swerved from duty by the popular clamor which has, not infrequently, demanded one kind of justice for corporations and another kind of justice for private individuals. The position of our Supreme Court has been repeatedly stated on this subject in passing upon remarks of counsel assigned as error. It is firmly established in this State that deprecatory allusions, made by counsel for the purpose of arousing the prejudices of a jury toward a corporation litigant, may be, if

1. C. L. 1897, Sec. 10468 provides that. "Suits against (domestic) corporations may be commenced (in circuit court) in the same manner that personal actions may be commenced against individuals." C. L. 1897, Sec. 753, is as follows: "All actions against corporations, except municipal corporations, shall be cognizable before a justice of the peace in like manner and with the like restrictions as the same are or may be by law before a justice of the peace when brought by an individual."

the wrongful object appears to have been accomplished, sufficient ground for a reversal².

An occasional departure from the policy of treating corporations like natural persons is marked in the current of decisions. Thus, while it is admissible in a slander or a libel case against a natural person, to prove the defendant's reputed wealth for the purpose of showing the probable weight attached to his utterances³, the reputed wealth of a corporation may not be shown under a like pretext⁴. The sounder rule would probably be to exclude such showing in either case⁵, but the law is otherwise.

§103. Abatement of Actions by Dissolution.

At common law, dissolution abated all pending actions⁶. A judgment taken thereafter was void⁷. In Michigan this rule has been changed by statute. Suits pending at the time of dissolution may be continued in force by order of court⁸, and suits brought by, or against, the corporation, at any time during a period of three years after dissolution⁹ may be prosecuted to final judgment¹⁰.

2. In *People v. Detroit, etc.*, P. R. Co., 125 Mich. 366-371, Justice Moore said: "A corporation when in court has no more rights than an individual, but it has the same rights, and the case should be tried with a view of disposing of the legitimate issues involved in the case, as the right of the controversy appears, instead of trying the case in such a way as to constantly appeal to the prejudices of the jury." For cases where remarks of counsel concerning corporations have been assigned as error, see *Sweet v. Michigan Central R. Co.*, 87 Mich. 559; *Selby v. Detroit Ry. Co.*, 122 Mich. 311; *Britton v. Michigan Central R. Co.*, 113 Mich. 491; *Johnson v. Detroit & M. Ry. Co.*, 135 Mich. 353; *Hillman v. Detroit United Ry.*, 137 Mich. 184; *Whipple v. Michigan Central R. Co.*, 143 Mich. 41; *Dolph v. Lake Shore etc. R. Co.*, 149 Mich. 278.

3. *Farrand v. Aldrich*, 85 Mich. 503; *Brown v. Barnes*, 39 Mich. 214; *Ellis v. Whitehead*, 95 Mich. 105.

4. *Randall v. Evening News Ass'n*, 97 Mich. 136.

5. *Watson v. Watson*, 53 Mich. 175.

6. *Cook's Corp.*, Sec. 642.

7. *Marshall's Corp.*, p. 452.

8. C. L. 1897, Sec. 10889, provides that: "The court in which any suit or proceeding against a corporation which shall have been dissolved by a decree in chancery or otherwise shall be pending at the time of such dissolution, shall have power, on the application of either party thereto, to make an order for the continuance of such suit or proceeding, and the same may thereafter be continued until a final judgment or decree shall be had therein."

9. C. L. 1897, Sec. 8534.—"All corporations whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless continue to be bodies corporate, for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been or may be established."

10. *Bewick v. Alpena Harbor Co.*,

§104. Commencement of Suits.

Corporations have always had the power to sue and be sued. In this State, the power is declared by a general statute¹¹, as well as by many of the enabling acts. Commencement of suit, at law or in equity, by a corporation differs but slightly from the practice applicable to commencement of suits by natural persons. Like individuals, corporations appear by attorney, or by solicitor. Their declarations are subscribed by counsel, and their bills, petitions and answers are subscribed in the corporate name (and verified when necessary) by authorized officers or agents. The managing officer of a corporation is presumed to have authority to commence suit in its name¹². Like a natural person, a corporation may voluntarily submit itself to the jurisdiction of a court, even where the question of jurisdiction might have been successfully raised¹³.

Misdescription of a corporation in process or pleadings can be raised by plea in abatement only¹⁴, and if the objection is not so made, it is waived. Description of a corporation plaintiff or defendant, as "a corporation organized and existing under the laws of the State of Michigan," is ordinarily sufficient¹⁵. And in special proceedings where greater particularity is deemed advisable, it is sufficient to add to the description above given,

39 Mich. 700; *Montgomery v. Merrill*, 18 Mich. 344. As to foreclosure of mortgages and liens upon property of dissolved corporations, see C. L. 1897, Sec. 8580, et seq.

11. C. L. 1897, Sec. 8527.—"All corporations shall, when no other provision is specially made, be capable, in the corporate name, to sue and be sued, appear, prosecute and defend all actions and causes to final judgment and execution, in any courts or elsewhere."

12. *Wachsmuth v. Merchants National Bank*, 96 Mich. 426-430. An affidavit in proof of an account, wherein the affiant avers that he is the treasurer (or other officer) of the corporation in whose behalf the affidavit is made, sufficiently shows the authority of the officer. *Forbes Lithograph Co. v. Winter*, 107 Mich. 116.

13. *Norberg v. Heineman*, 59 Mich. 210-213; *Arno v. Wayne Circuit Judge*, 42 Mich. 362. A cor-

poration submits to the jurisdiction of the court when it files a demurrer. *Thompson v. Mut. Benefit Ass'n*, 53 Mich. 522. Or when it pleads the general issue. *Gott v. Brigham*, 41 Mich. 234; *Grand Rapids etc. R. Co. v. Gray*, 38 Mich. 461.

14. C. L. 1897, Sec. 10473.—"In suits or proceedings by or against any corporation, a mistake in the naming of such corporation shall be pleaded in abatement; and if not so pleaded, shall be deemed to have been waived." Sec. 10439.—"Any railroad company may be sued by the name in which its business shall be conducted when said suit shall be brought, and it shall not be permitted to deny, by plea, or otherwise, that it is a corporation existing under said name." Plea of general issue by a defendant corporation admits that it has been sued by the right name.—*Lake Superior Building Co. v. Thompson*, 32 Mich. 293.

15. *Palmiter v. Pere Marquette Lumber Co.*, 31 Mich. 182.

the title and date of approval of the act under which the corporation is organized¹⁶.

In cases where the corporate existence is not involved in the issue, a corporation may be sued in its corporate name without describing it as a corporation, where the name and condition of the defendant are such as to reasonably raise the presumption that it is an incorporated company¹⁷. Even in suits against foreign corporations, it is not essential to allege that the defendant is foreign to this State¹⁸, except in instances where a claim of right is founded upon that fact.

A corporation may be known by more than one name¹⁹, and suit brought by or against it in any name by which it is known will be sufficient, unless advantage is taken of the defect by plea in abatement²⁰.

Service of process in chancery suits may be made in the manner authorized for the service of process in suits at law²¹. Suits at law may be commenced against domestic corporations, in circuit court, by service of declaration or summons upon the presiding officer, cashier, secretary, treasurer, or any other officer or agent of the corporation, or by leaving the same at the banking house or office of the corporation²². Where a domestic

16. C. L. 1897, Sec. 10472.—“In actions by or against any corporation created by or under any law of this state, it shall not be necessary to recite the act or acts of incorporation, or the proceedings by which such corporation was created, or to set forth the substance thereof, but the same may be pleaded by reciting the title of such act, and the date of its approval.” When corporate existence is a jurisdictional fact put in issue by the pleadings and forming the essence of the controversy (as, for example, in a quo warranto proceeding), it has been held that the corporation should be described with particularity.—*People v. DeMill*, 15 Mich. 164-180.

17. *Prussian National Ins. Co. v. Eisenhardt*, 153 Mich. 198-202. *Bennington Iron Co. v. Rutherford*, 18 N. J. L. 105.

18. *Williams v. Grain & Stock Board*, 99 Mich. 80; but see *Ettelsohn v. Fireman's Fund Ins. Co.*, 64 Mich. 331-335. In *Grinnell v. Ni-*

agara Fire Ins. Co., 127 Mich. 19-22, it was held, that an affidavit and writ of garnishment describing a foreign corporation as, “a corporation, etc.” without stating whether it was foreign or domestic was sufficient.

19. *People v. Oakland County Savings Bank*, 1 Doug. (Mich.) 238-286. *Thatcher v. West River National Bank*, 19 Mich. 196; *Petrie Lumber Co. v. Collins*, 66 Mich. 64; *Iron Star Co. v. Wehse*, 117 Mich. 487.

20. C. L. 1897, Sec. 10473; *Meurer v. Detroit etc. Protective Association*, 95 Mich. 451-454.

21. C. L. 1897, Sec. 10023.—“Process issued from Circuit Courts in chancery may be served upon corporations in the same manner as is or may be provided by law for service upon such corporation of process in actions at law.”

22. C. L. 1897, Sec. 10468.—“Suits against corporations may be commenced by writs of summons or by declaration, in the same manner that

corporation has failed to keep up its organization, or has abandoned its business, service of process may be made upon its last presiding officer, president, cashier, secretary or treasurer²³. Service upon foreign corporations, both at law and in equity, may be had by serving summons, declaration or chancery subpoena upon any officer or agent of the corporation, or upon the conductor of any railroad train, or upon the master of any vessel owned by or in the service of the corporation²⁴. Where a foreign corporation has been assigned by the Secretary of State to operate under the provisions of an act which itself provides

personal actions may be commenced against individuals, and such writ or a copy of such declaration in any suit against a corporation shall be served on the presiding officer, cashier, secretary, or treasurer, or any other officer or agent of such corporation, or by leaving the same at the banking house or office of such corporation, and may be served in any county in the state where the plaintiff resides: Provided, That in any county of the state where said plaintiff may reside, other than the one wherein the principal office of such corporation may be located, a writ of attachment may be the first process against such corporation, which shall be served in the same manner as other writs of attachment issuing out of the court wherein suit is commenced, and, upon the return of such service being made, such corporation shall be deemed to be in court, and the like proceedings, as near as may be, shall be thereupon had as in cases of suits against individuals. All acts or parts of acts inconsistent herewith are hereby repealed: Provided, further, that the attachment proceedings as herein provided for shall not apply to railroad companies or corporations whose right of way, or any part of the same, is within the boundaries of the state of Michigan, nor to navigation companies or corporations." This section applies to domestic corporations only.—Grand Trunk Ry. Co. v. Circuit Judge, 106 Mich. 248. Reath v. Western Union Telegraph Co., 89 Mich. 22; Watson

v. Wayne Circuit Judge, 24 Mich. 38; See also note 24, post. Newell v. Great Western R. Co., 19 Mich. 336. For act providing for service of process upon Interurban Electric Railways, see Act 208 Pub. Acts 1901, p. 319.

23. C. L. 1897, Sec. 10469.

24. C. L. 1897, Sec. 10422, as amended by Act 3, Pub. Acts 1909, pp. 7-8.—"In cases where the plaintiff is a resident of the state of Michigan, suits may be commenced at law or in equity in the circuit court for any county in this state where the plaintiff resides or where service of process may be had, and suits at law may be commenced before any justice of the peace in such county, against any corporation not organized under the laws of this state, by service of a summons, declaration or chancery subpoena, within the state of Michigan, upon any officer or agent of the corporation, or upon the conductor of any railroad train, or upon the master of any vessel belonging to or in the service of the corporation against which the cause of action has accrued. And where the plaintiff is a non-resident of the state of Michigan, suits may be commenced in like manner against such corporations, in all cases where the cause of action accrued within the state of Michigan: Provided, that in all cases, except before justices of the peace, no judgment shall be rendered for sixty days after the commencement of suit, and the plaintiff shall, within thirty days after commence-

how process may be served, the provisions of either this general law, or of such act, may be followed²⁵.

Attachment lies against domestic corporations as against natural persons, and under the same circumstances²⁶. A writ of attachment is but a summons with a clause added authorizing seizure of property²⁷. An attachment issued out of Circuit Court against a domestic corporation may be served upon the same officers and agents upon whom a summons might be served²⁸. The fact of being a foreign corporation is, in itself, a ground for proceeding by attachment²⁹. Service on any officer, member, clerk or agent of a foreign corporation is sufficient³⁰.

Actions of tort against foreign corporations may be commenced by attachment. If the defendant has a manager, agent, superintendent or other principal officer within this State, service may be made upon him³¹. Service upon foreign mutual benefit societies³² and upon non-resident life, fire, inland or marine insurance companies³³ may be had by serving the process upon the commissioner of insurance. As to domestic insurance companies, service may be had upon any agent found within the State³⁴. There is a special statute devoted to service of process upon railway companies³⁵.

ment of suit, send notice by registered letter to the corporation defendant at its home office." Sending notice by mail is not jurisdictional.—*Emerson v. McCormick Harvesting Machine Co.*, 51 Mich. 5.

25. *Moinet v. Burnham, Stoepel & Co.*, 143 Mich. 489-492; *Ryerson v. Wayne Circuit Judge*, 114 Mich. 352.

26. *Michigan Dairy Co. v. Runnels*, 96 Mich. 109-112.

27. *Thompson v. Thomas*, 11 Mich. 276.

28. C. L. 1897, Sec. 10468. Suits against corporations organized under Act 232 of Pub. Acts of 1903, as amended by Act 313 of 1909, may be commenced by process served as provided therein, or as permitted by Sec. 10468. *Goodrich v. Hackley, Phelps & Bonnell*, 141 Mich. 343; *Moinet v. Burnham, Stoepel & Co.*, 143 Mich. 489.

29. C. L. 1897, Sec. 10556. *Michigan Dairy v. Runnels*, 96 Mich. 109.

30. C. L. 1897, Sec. 10474.

31. C. L. 1897, Sec. 10011; See also Sec. 10474.

32. C. L. 1897, Sec. 10429.

33. C. L. 1897, Sec. 10015.

34. C. L. 1897, Sec. 10444. *Monger v. New Era Association*, 145 Mich. 683.

35. Act 260 Pub. Acts 1899, p. 419 provides: "That whenever in any suit or proceedings, either in law or equity, it shall become necessary to serve any process, notice or writing upon any railroad company in this State, it shall be sufficient to serve the same upon any station agent, or ticket agent at any station or depot along the line, or at the end of the railroad of such company, and such service shall be deemed as good and effectual as if made on the officers, stockholders or members, or either of them, of such company: Provided, that in counties where the company has no such station or ticket agent, service may be made by serv-

Garnishment process issued out of Circuit Court may be served upon the president, secretary, cashier, treasurer, superintendent, general agent, or such other officer as the corporation may have appointed, or as the court may direct³⁶. Garnishment process may be served upon any officer, agent or conductor of any railroad train, or master of any vessel, of the defendant³⁷.

Suit against a domestic corporation may be commenced in justice court by summons only³⁸. Attachment can not be brought³⁹. As against a foreign corporation, suit in justice court may be begun by attachment⁴⁰. The fact that the corporation is foreign is, in that court, as well as at circuit, a good ground for attachment⁴¹. Service may be had on any officer, member, clerk or agent of such corporation within this State⁴².

A justice court summons may be served by leaving a copy of the writ with the president, cashier, secretary, treasurer, or other officer or agent of such corporation, or by leaving such copy at the banking house or office of such corporation⁴³. If the defendant is a railway corporation, service may be had by leaving a copy of the writ with a station agent or ticket agent at any station or depot along the line, or at the end of the railroad of said company. Where the company has no station or ticket agent, the writ may be served upon any conductor of a freight or passenger train⁴⁴. Garnishment process issued out of justice court may be served upon corporations in the manner provided by law for the service of summons⁴⁵. Corporations, both

ing the same upon any conductor of a freight or passenger train." *Grand Trunk Ry. Co. v. Circuit Judge*, 106 Mich. 249.

36. C. L. 1897, Sec. 10628, Am. Act 60 Pub. Acts 1901, p. 91.

37. *Id.*

38. Act 68 Pub. Acts 1901, p. 101. —"The first process against a corporation shall be a summons and shall be served by leaving a copy thereof with the president, cashier, secretary, treasurer or any other officer or agent of such corporation, or by leaving such copy at the banking house or office of such corporation; and upon the return of such service being made such corporation shall be deemed to be in court and the like proceedings as near as may be shall be thereupon had as in cases of suits between individuals."

39. *Brigham v. Eglinton*, 7 Mich. 291; *Hewitt v. Wagar Lumber Co.*, 38 Mich. 701.

40. Service of an attachment issued out of Justice Court may be made upon a foreign corporation in accordance with C. L. 1897, Sec. 730-731, or with Sec. 10474. See *Davidson v. Fox*, 120 Mich. 385. As to garnishment in suits commenced by attachment, see C. L. 1897, Sec. 746, also *Kirby Carpenter Co. v. Trombley*, 101 Mich. 449.

41. C. L. 1897, Sec. 721.

42. C. L. 1897, Sec. 10474.

43. C. L. 1897, Sec. 754, Am. by Act 68 Pub. Acts 1901, p. 101.

44. Act 260 Pub. Acts 1901, p. 419.

45. C. L. 1897, Sec. 10616.—"Any process, notice or writing issued by a Justice of the Peace, against any

foreign and domestic, may be proceeded against by garnishment in justice court⁴⁶. Where the statutes provide that service may be had upon an agent of a corporation, the term "agent" is construed to refer to one having a controlling authority, either general or special, over all, or some department of, the corporation's business. Minor employees are not embraced within the term⁴⁷. Service upon a traveling salesman of a corporation, whether foreign or domestic, is held to be service upon an agent of the corporation within the meaning of the law⁴⁸. Lawful service can not be made upon an officer or agent who is adversely interested in the result of the suit, and whose interest would afford him a motive for concealing the fact of service⁴⁹.

Where, through false statements of corporate officials, a sheriff, or other officer of the law is led to make service upon one who is not an officer of the corporation, the corporation is estopped to deny that the service was made upon a proper person⁵⁰. In a case where goods had been ordered for the preconceived purpose of attaching them, it was held that service so gained was an abuse of process, and that it conferred no jurisdiction⁵¹.

§105. Return of Officer.

The return of the officer should show with exactness the manner in which service was made. If service was had upon a corporate officer, the return should show the name of the officer and the office held by him in the company, in addition to the usual formalities. When service has been made upon an agent, his competency to receive service should be shown by designating the nature of his employment and the place where service was made⁵². Where substituted service is had, the return should

corporation, may be served in the manner prescribed by law for service of process on the corporation against which the process notice or writing is issued."

46. C. L. 1897, Sec. 10014. *Grinnell v. Niagara Fire Ins. Co.*, 127 Mich. 19-22.

47. *Lake Shore & M. S. Ry. v. Hunt*, 39 Mich. 469-471. Service upon a former agent who has ceased to act for the corporation is ineffectual. *Spiker v. American Relief Society*, 140 Mich. 225. *Thomson v. McMorran Milling Co.*, 132 Mich.

591-599.

48. *Ryerson v. Wayne Circuit Judge*, 114 Mich. 153; *Moinet v. Burnham, Stoepel & Co.*, 143 Mich. 489-492.

49. *Atwood v. Sault Ste. Marie Light Co.*, 148 Mich. 224.

50. *Wilson v. Calif. Wine Co.*, 95 Mich. 117-120.

51. *Copas v. Anglo-American Provision Co.*, 73 Mich. 541-546.

52. In *Grand Rapids Chair Co. v. Runnels*, 77 Mich. 104-108, the following return was held sufficient. "Served at the city of Grand Rap-

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affirmatively show that every statutory condition has been strictly observed⁵³.

§106. Waiver of Irregularity.

A general appearance, or pleading the general issue⁵⁴, or proceeding to trial on the merits⁵⁵ waives all defects in service of process. In fact a plea of general issue, without denial of corporate existence thereunder, forecloses the defendant's right to deny the corporate capacity of the plaintiff⁵⁶.

§107. Statutory Proceedings Against Stockholders.

In general, where an enabling act provides that rights of action against stockholders may be enforced in a proceeding founded upon that statute, the right may be enforced by an action in assumpsit⁵⁷. There is, in this State, a general statute⁵⁸ providing that, whenever by the constitution or laws of this state, the stockholders of any corporation are individually liable for any debts of such corporation (except labor debts where suit is brought by the laborer) after judgment taken and an execution returned *nulla bona*, the creditor may petition the court that judgment may be awarded against the several stockholders, who are then cited to appear. The sheriff's return of the execution is conclusive as between the parties and it is immaterial that the debtor corporation may have had property in the county subject to execution, but not found⁵⁹. It is likewise immaterial that the corporation defendant had property in other counties of the

ids, Michigan, a certified copy of the within writ on Chas. C. Comstock, as president of the Grand Rapids Chair Company, who is the owner of said goods and chattels described in the within writ." The word "who" was held to clearly refer to the corporation.

53. *Merrill v. Montgomery*, 25 Mich. 73, *Hartford Fire Ins. Co. v. Owen*, 30 Mich. 441-442. In the latter case Justice Campbell said: "It is a well settled rule of law that all exceptional methods of obtaining jurisdiction over persons, natural and artificial, not found within the statute, must be confined to the cases and exercised in the way precisely indicated by the statute."

54. *Improved Match Co. v. Mich. Mut. Fire Ins. Co.*, 122 Mich. 256.

55. *Webster v. Wheeler*, 119 Mich. 601.

56. C. L. 1897, Sec. 10471; *Ludington Water Supply Co. v. Ludington*, 119 Mich. 480-487; *Garton v. Union City Bank*, 34 Mich. 279; *Grand Rapids & Ind. R. Co. v. Southwick*, 30 Mich. 444-445; *Locke v. Leonard Silk Co.*, 37 Mich. 479; *Pegg v. Bidleman*, 5 Mich. 27.

57. C. L. 1897, Sec. 9797; *Wachusett National Bank v. Steel*, 135 Mich. 688; *American Steel Wire Co. v. Eddy*, 130 Mich. 266.

58. C. L. 1897, Sec. 8554, et seq.

59. *Ripley v. Evans*, 87 Mich. 225-228; *Michels v. Stork*, 52 Mich. 263.

state sufficient to pay the debt, but upon which no levy was attempted⁶⁰. In such actions the issue is made upon the petition and answer⁶¹, and trial may be had as in other cases at law. If judgment passes against the respondents, upon trial or by default, the court may thereafter make an order apportioning among them the *pro rata* amount for which they shall each be held liable. An execution may issue after fifteen days. If the share of any respondent can not be collected, the amount may be reapportioned among the other respondents. The stockholders thus held liable may compel contribution from other stockholders⁶². This act has been sustained as constitutional by the Supreme Court⁶³.

§108. Quo Warranto.

A corporate charter can be forfeited only by a direct proceeding brought in behalf of the State⁶⁴. Quo warranto is a proper remedy⁶⁵. But it is not an exclusive remedy in all cases. If the State desires to restrain a corporation from acts exceeding charter authority, the proceeding may be either by quo warranto or in equity. The remedies are concurrent and the State may elect between them⁶⁶. If a corporation exercises some of its franchises legally, and others illegally, the judgment of ouster may be extended to all of the franchises, or, if justice warrants, may be confined to those illegally exercised⁶⁷.

Quo warranto lies for violation of state law only, and not for infraction of city ordinances⁶⁸. It may be brought to enforce an ouster where a corporation is operating for purposes of monopoly, or in illegal restraint of trade⁶⁹. It lies, too, in cases where a corporation, having franchises in which the public is interested, has failed to maintain its property in such a manner

60. *Ripley v. Evans*, Id.

61. C. L. 1897, Sec. 8559.

62. Id. Sec. 8566.

63. *Ripley v. Evans*, ante.

64. *Grand Rapids v. Hydraulic Co.*, 66 Mich. 606.

65. *Atty. General v. A. Booth & Co.*, 143 Mich. 89-102.

66. *People v. Michigan Sanitarium & Ben. Ass'n*, 151 Mich. 452; *Attorney General v. A. Booth & Co.*, 143 Mich. 89.

67. *People v. Oakland County Savings Bank*, 1 Doug. (Mich.) 282-291; *Stewart v. Father Matthew Society*, 41 Mich. 67; *People v. Mich.*

Sanitarium, etc. Ass'n, 151 Mich. 452-464. In this case Justice Moore made the following statement: "The case made by the information shows that the respondent is exercising a franchise or privilege not conferred upon it by law. This it has no right to do, and this it may be prevented from doing by a proper order made in this (quo warranto) case without depriving it of authority to carry on its legitimate business."

68. *Maybury v. Mut. Gas Light Co.*, 38 Mich. 154.

69. C. L. 1897, Sec. 11377-11380.

that the franchises may be enjoyed in accordance with the intent of the charter⁷⁰. Quo warranto lies for the purpose of testing the right of a foreign corporation to do business in this State⁷¹. In no instance will forfeiture be presumed. It must be clearly alleged in the pleadings and must be established by proof⁷².

§109. Mandamus.

Mandamus is a discretionary writ and will never be granted, except upon a clear showing of right⁷³. Its purpose is to compel the performance of an acknowledged duty, or to enforce the observance of an existing right, rather than to determine what the right or duty is⁷⁴. Where a corporation has assumed, and fails to discharge, a public duty, mandamus lies to compel it⁷⁵. But the writ will not issue when compliance is impossible⁷⁶. In that event quo warranto is the proper remedy⁷⁷.

Mandamus lies to compel the custos of corporate records to permit a stockholder to exercise the right of inspection⁷⁸. It is the proper remedy to compel the reinstatement of a member illegally expelled⁷⁹. But where there was good ground for the expulsion, and restoration of the member would be of no pecuniary benefit to himself and would be detrimental to the organization, the writ will be denied⁸⁰. It has been held in this

70. In *Coon v. Plymouth Plank Road Co.*, 32 Mich. 248-250, it was held that a finding "that the plank road of respondents had been for more than six years in a broken and worn out condition for its entire length, and had been for that entire time, and still continued to be, entirely unsafe, and in an unsafe condition for vehicles to pass over and upon," warranted a judgment of ouster.

71. *Attorney General v. A. Booth & Co.*, 143 Mich. 89.

72. *Attorney General v. Bank of Michigan*, Har. Chan. (Mich.) 315.

73. *Lamphere v. United Workmen*, 47 Mich. 429-431; *Allnut v. Subsidiary High Court*, 62 Mich. 110.

74. *Burland v. Mut. Benefit Ass'n*, 47 Mich. 424-426; *Hargnell v. Lafayette Ben. Society*, 47 Mich. 424-426.

75. *Attorney General v. American Express Co.*, 118 Mich. 682:

Lansing v. Lansing City Electric Ry. Co., 109 Mich. 123; *Township v. Detroit United Ry.*, 146 Mich. 198; *People v. State Ins. Co.*, 19 Mich. 392.

76. *Benton Harbor v. Railway Co.*, 102 Mich. 386.—In this case it was held that the financial inability of the corporation to carry out its charter purposes was a good reason for ousting it of its franchises. See also, *People v. Gravel Road Co.*, 105 Mich. 13.

77. *Benton Harbor v. Railway Co.*, ante.

78. *People v. Walker*, 9 Mich. 330.

79. *Meurer v. Detroit etc. Protective Ass'n*, 95 Mich. 451; *People v. Mechanic Aid Society*, 22 Mich.

86. As to rights of excluded students, see *Booker v. Grand Rapids, etc., College*, 16 D. L. N. 56 (March, 1909).

80. *Meister v. Anshei Chesed Congregation*, 37 Mich. 542.

State that mandamus will not lie to compel payment of a declared dividend⁸¹, nor will the writ be granted to compel a corporation to levy an assessment to pay a debt⁸².

§110. Bankruptcy.

Under the present national bankruptcy law, a corporation can not go into *voluntary* bankruptcy⁸³. But any corporation engaged principally in manufacturing, trading, printing, publishing, mining or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an *involuntary* bankrupt, if guilty of an act of bankruptcy⁸⁴.

§111. Remedies in Equity.

Irrespective of the adequacy of the relief at law, equity has jurisdiction in all fraud cases where the complainant is entitled to specifically equitable relief⁸⁵. Where a corporation is conducted as a mere cloak for the perpetration of fraud, equity has power to grant relief by way of discovery and accounting⁸⁶. Equity will even restrain acts done in furtherance of the purpose for which the corporation has been organized, when it appears that such acts are unlawful⁸⁷.

Stockholders may go into equity for relief against gross misconduct or negligence on the part of managing officers. To give a stockholder this right, there must have been a clear breach of duty⁸⁸. Usually demand upon the directors for observance of

81. *Van Norman v. Cent. Car Co.*, 41 Mich. 166.

82. *Miner v. Mich. Mut. Ben. Ass'n*, 65 Mich. 84.

83. Bankruptcy Law of 1898, Sec. 4.

84. *Id.*

85. *Hamilton v. Hulled Bean Co.*, 143 Mich. 277-286, 16 D. L. N. 273; *Fred Macey Co. v. Macey*, 143 Mich. 138-155; *Bale v. Mich. Tontine Investment Co.*, 132 Mich. 479; *John Hancock Mut. Life Ins. Co. v. Dick*, 114 Mich. 337.

86. *Edwards v. Tontine Investment Co.*, 132 Mich. 1-5. In *Chicago & Grand Trunk Ry. Co. v. Bancroft*, 91 Mich. 166, it was held that equity will, at the instance of the *bona fide* holders of stock and bonds of a corporation, enjoin a suit brought upon unconscionable con-

tracts fraudulently acquired during control by one who was formerly the owner of a majority of the stock. See also *Ruttle v. What Cheer Coal Mining Co.*, 153 Mich. 300.

87. *Attorney General v. A. Booth & Co.*, 143 Mich. 89; *People v. Mich. Sanitarium etc. Ass'n*, 151 Mich. 452-464; *Northern Securities Ass'n v. United States*, 193 U. S. 197, 48 L. ed. 679; C. L. 1897, Sec. 9755, et seq. Thus the issuance of bonds at a usurious rate of interest, or the making of a usurious contract, may be enjoined by a stockholder where he is in danger of suffering injury through the illegal transaction.—*Fletcher & Sons v. Circuit Judge*, 136 Mich. 511-513.

88. *LaGrange v. State Treasurer*, 24 Mich. 468-472.

the right involved is an essential prerequisite of the suit. But where the guilty parties are directors in control, and are necessarily parties defendant, a stockholder may bring suit without first demanding that the directors bring it. It is not to be presumed that the directors would sue themselves, nor that, if they did, they would prosecute with diligence⁸⁹. In an equitable proceeding brought by a stockholder for the benefit of a corporation, the corporation should be joined⁹⁰. Stockholders who have participated in the misconduct may also be made parties to the suit⁹¹. Unreasonable delay in commencement of suit operates to bar the right⁹². Where an action is barred by limitations as to the corporation, it is barred as to the individual stockholders⁹³.

Independent of statute, equity has power to compel stockholders to pay their subscriptions into the treasury of the corporation⁹⁴, or into the hands of a trustee in bankruptcy⁹⁵, or into the hands of a receiver for the benefit of creditors⁹⁶. In a bill to compel payment of subscriptions, all solvent stockholders whose subscriptions are unpaid are necessarily parties defendant⁹⁷, but insolvent stockholders need not be joined⁹⁸, nor need those be joined who are beyond the jurisdiction of the court⁹⁹.

Stockholders who have not paid their subscriptions may be

89. *Kern v. Arbeiter Verein*, 139 Mich. 233-241.

90. *Cicotte v. Anciaux*, 53 Mich. 227; *Brockett v. Lewis*, 144 Mich. 561; *Coxe v. Hart*, 53 Mich. 557.

91. *Stone v. Pontiac O. & N. R. Co.*, 139 Mich. 265.

92. *Keeney v. Converse*, 99 Mich. 316.

93. *Bates v. Boyce's Estate*, 135 Mich. 540-541.

94. *C. H. Little Co. v. Cemetery Ass'n*, 135 Mich. 248.

95. *Wood v. Sloman*, 150 Mich. 177.

96. The remedy provided by C. L. 1897, Sec. 9755, *et seq.* is cumulative with the common law power of courts of equity to compel payment of subscriptions. *C. H. Little v. Cemetery Ass'n*, ante; *Brown v. Mining Co.*, 105 Mich. 653. In *Turnbull v. Prentiss Lumber Co.*, 53 Mich. 387-394, Justice Champlin said: "The stock of an insolvent corporation constitutes a trust fund

for the payment of its creditors. The same has sometimes been said with reference to the other property of an insolvent corporation. Among the creditors of such corporation equality is equity. The statute recognizes this maxim and declares that the court shall, upon final decree, cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among the fair and honest creditors of such corporation in proportion to their respective debts. Any creditor of the corporation is entitled to come in by bill or petition and establish his claim and share in the assets, and this he may do, although the bill is not filed in behalf of all creditors or of such as should come in and share the expense."

97. *Wilson v. Calif. Wine Co.*, 95 Mich. 117; *Dunston v. Hoptonic Co.*, 83 Mich. 372.

98. *Wilson v. Calif. Wine Co.*, Id.

99. *Brewer v. Mich. Salt Ass'n*, 58 Mich. 351-356.

made defendants in a judgment creditor's bill¹⁰⁰. Such a bill may be filed without leave of court¹⁰¹, the only necessary condition precedent being that the complainant shall possess a judgment against the corporation, upon which execution has been issued and return unsatisfied¹⁰².

§112. Receivers.

A corporation can not apply in its corporate capacity to be put into the hands of a receiver¹⁰³; nor can a receiver be appointed for a corporation in a proceeding to which the corporation is not a party¹⁰⁴. Under its general equitable jurisdiction, a court may, without statutory authority, appoint a receiver "to prevent fraud, or to save the subject of litigation from material injury, or to rescue it from threatened destruction"¹⁰⁵. The exercise of this power is purely discretionary. In general, the court has no power to appoint a receiver upon an *ex parte* application¹⁰⁶.

Under its general equitable jurisdiction a court may, at the suit of a stockholder who is suffering a continued fraud which can not be adequately remedied otherwise, appoint a receiver

100. *Schaub v. Welded Barrel Co.*, 130 Mich. 606; *Young v. Erie Iron Co.*, 65 Mich. 111.

101. *McBryan v. Universal Elevator Co.*, 130 Mich. 111-114; *Young v. Erie Iron Co.*, *Id.*; *Turnbull v. Prentiss Lumber Co.*, 55 Mich. 387.

102. *Grennell v. Ferry*, 110 Mich. 262; *First National Bank v. Dwight*, 83 Mich. 189; *Brewer v. Mich. Salt Ass'n*, 58 Mich. 351; *Tawas & Bay Co. R. Co. v. Circuit Judge*, 44 Mich. 479-482.

103. *Kimball v. Goodburn*, 32 Mich. 10.

104. *Scripps v. Crawford*, 123 Mich. 173.

105. *Miner v. Belle Isle Ice Co.*, 93 Mich. 97; *Ralph v. Circuit Judge*, 100 Mich. 164; *Thomp. Corp.*, Sec. 6842. Where a bill alleged that directors had fraudulently mortgaged corporate property to a trustee for their own benefit, and that the trustee, for the purpose of wrecking the corporation and as a part of the fraudulent scheme, had foreclosed the mortgage, and the property had been bid in by a confederate, it was

held competent for the court to place the property in the hands of a receiver, pending final determination of the suit. In disposing of the case Justice Cooley said: "The power of the court to take possession of property, the title to which is in dispute, and to hold it through its officer until the controversy is determined, is undoubted." *Tregaskis v. Superior Court*, 47 Mich. 509-511.

106. *People v. St. Clair Circuit Judge*, 31 Mich. 456. In *Turnbull v. Prentiss Lumber Co.*, 55 Mich. 397. Justice Champlin said: "Courts of equity are always averse to appointing receivers upon an *ex parte* application without notice to defendants whose rights are to be affected. It must be an extraordinary case which would justify such appointment *ex parte*, and some special circumstances must be shown to exist which would render it necessary to put a receiver in possession of the debtor's property to prevent irreparable loss: the rule being that a receiver will not be appointed before answer, unless it appears that

and proceed to wind up the company¹⁰⁷. Such a receiver was appointed at the suit of bond holders in a case where the corporation had defaulted in payment of interest, and was without proper executive officers, and was threatened with dissipation of its property through tax and execution levies¹⁰⁸. But a receiver will not be appointed on account of mere dissatisfaction with the management¹⁰⁹. By statute, a receiver may be appointed upon a creditor's bill¹¹⁰, or upon a bill for dissolution filed by a majority of the directors, trustees, or other officers having management of the corporation¹¹¹.

General creditors whose claims are not in judgment have no right to intervene by answer or cross-bill in a suit brought to obtain a receiver for a corporation. The proceeding will inure equally to the benefit of all creditors in any event, hence there is no excuse for confusing the issues and enlarging the scope of the litigation by permitting general creditors to intervene¹¹². Where a receiver has been appointed under an order which does not divest the corporation of title to its assets, the corporation is not by implication deprived of the right to act by its officers and agents so far as such action does not conflict with the rights and powers of the receiver¹¹³.

there is danger to the property or fund by the insolvency of the party having possession of it, or from some other cause; but when justice requires it, and the merits appear to demand it, upon the hearing of which due notice is given, one will be appointed."

107. *Miner v. Belle Isle Ice Co.*, 93 Mich. 97-117. In this case Justice McGrath said: "This corporation has utterly failed of its purpose, not because of matters beyond its control, but because of fraudulent mismanagement and misappropriation of its funds. Complainant has a right to insist that it shall not continue as a cloak for a fraud upon him, and shall not longer retain his capital to be used for the sole advantage of the owner of the majority of the stock, and a court of equity will not so far tolerate such a manifest violation of the rules of natural justice as to deny him the relief to which his situation entitles him."

108. *Ralph v. Shiawasee Circuit Judge*, 100 Mich. 164.

109. *Rumney v. Detroit etc. Cattle Co.*, 116 Mich. 640.—The application of the holder of a small amount of stock will not be entertained with favor where all other stockholders appear to be satisfied and the receivership would obviously work them an injury disproportionate to any possible good which might flow from it.

110. Chancery Rule No. 30.

111. C. L. 1897, Sec. 10852, *et seq.*: *Cady v. Manufacturing Co.*, 48 Mich. 133-136.

112. *Heap v. Heap Mfg. Co.*, 97 Mich. 147; *Riverside Iron Works v. Wayne Circuit Judge*, 100 Mich. 124; *Smith v. Smith Mfg. Co.*, 119 Mich. 11-16. In the case last cited, Justice Hooker strongly intimates that such an intervention might be permitted to prevent a collusive adjustment between the complainant and the corporation.

113. *Detroit R. Co. v. Campbell*, 140 Mich. 384-382.

After appointment of a receiver, the right to bring suit against the corporation (except by permission of court) ceases, and the creditors have, instead, the right to *pro rata* participation in the net distributive assets of the corporation, until their claims, as proved, with interest, have been paid in full¹¹⁴.

In this State a creditor; officer or stockholder, as well as a stranger, may be appointed as the receiver of a corporation¹¹⁵.

After a receiver has been appointed, the right to bring actions for the benefit of stockholders and creditors vests in him¹¹⁶. But where the receiver himself, in common with others, is a wrongdoer or a delinquent, it is held that share holders or creditors may bring suit¹¹⁷.

§113. Executions.

Execution against corporate property should be levied in the same manner as other executions are levied, except where there is some statutory provision to the contrary¹¹⁸. Among the cases in which there are special statutory provisions, we find the following:

(a) Execution may, upon order of court, after *fiery facias* against the corporation has been returned unsatisfied, be issued directly against the members of a partnership association, limited, to the extent of their unpaid subscriptions¹¹⁹.

(b) Franchises of corporations authorized to receive tolls may be sold on execution¹²⁰.

114. In re E. Bement's Sons, 150 Mich. 530-536.—A creditor is entitled to dividends out of the general assets only upon his claim as proved, without interest beyond the date set for proving claims; but if he holds collateral, he may apply it in payment of both principal and interest of any unpaid balance. *Id.*

115. Moran v. Wayne Circuit Judge, 125 Mich. 6; Gypsum Plaster & Stucco Co. v. Kent Circuit Judge, 105 Mich. 498; Covert v. Rogers, 38 Mich. 368; Barker v. Wayne Circuit Judge, 117 Mich. 325; C. L. 1897, Sec. 10860.

116. Rouse, Hazard & Co. v. Cycle Co., 111 Mich. 251-260.

117. Flynn v. Third National Bank, 122 Mich. 642-644; See also Leslie v. Lorillard, 110 N. Y. 519; 1 L. R. A. 456.

118. C. L. 1897, Sec. 10349.—“Executions against corporations, when levied upon any corporate property, shall be levied in the same manner as other executions are levied, except in cases otherwise provided by law.”

119. C. L. 1897, Sec. 6080; Rouse, Hazard & Co. v. Circuit Judge, 104 Mich. 234.

120. C. L. 1897, Sec. 8535.—The words “other corporations” used in this statute are not construed to include other corporations generally, as for example, a telephone company.—Ripley v. Evans, 87 Mich. 217-228. Nor are they restricted to such corporations as have “toll houses and toll gates.” They include street railways authorized to collect toll or fare.—McKee v. Grand Rapids & R. L. Street Ry. Co., 41 Mich. 274-278.

(c) Upon recovery of judgment against the defendant in quo warranto cases, execution for costs may be issued against the persons claiming (without right) to be a corporation¹²¹.

At common law, shares of corporate stock were not subject to levy. Whatever authority exists for their seizure upon attachment or execution must be found in the statute¹²². The statutes of Michigan provide for such seizure¹²³. A levy upon corporate shares, as we have seen, is secondary to any lien thereupon given by law to the corporation. One who acquires shares at sheriff's sale subject to such a lien should proceed promptly to tender the amount of the debt. Undue delay giving rise to changed conditions may invalidate his right¹²⁴. Shares of stock can not be seized upon an attachment or an execution, against one having a beneficial interest, but no legal title, therein¹²⁵. Acquiescence of stockholders in a void judicial sale will not validate the proceeding¹²⁶.

—In this case Justice Campbell said: "The word 'toll' here used is used in its established common law meaning, and it is not a careless expression. The term applies at common law to a very large class of dues and exactions which are in the nature of fixed rights, and which cannot be lawfully exceeded. They are generally, if not universally connected with some franchise which involves duties as well as privileges of a general or public nature. The right to receive fixed tolls is found in fairs, markets, mills, turnpikes, ferries, bridges and many other classes of interests where the owner of the franchise is obliged to accommodate the public, and the public in turn are protected from extortion by an obligation to pay only regular dues."

121. C. L. 1897, Sec. 9962.

122. Lyon v. Dennison, 80 Mich. 371; Van Norman v. Circuit Judge, 45 Mich. 208; Blair v. Compton, 33 Mich. 414.

123. C. L. 1897, Sec. 10335, *et seq.*; Am. by Act 219 Pub. Acts 1903, p. 347.—"Any share or inter-

est of any stockholder in any bank, insurance company or any joint stock corporation or any other corporation that is or may be incorporated under the authority of, or authorized to be created by, any law of this State, may be attached or taken in execution and sold. * * * Where a corporation has ceased to do business, the method of service of process is as provided in C. L. 1897, Sec. 10469. In all cases to obtain a valid sale, statutes authorizing seizure of stock must be strictly followed. See James v. Pontiac & Groveland P. R. Co., 8 Mich. 92. Shares of building and loan associations organized under Chap. 206 of C. L. 1897, are exempt to the extent of one thousand dollars when held by a householder having no exempt homestead.

124. Newberry v. Lake Superior Iron Co., 17 Mich. 140.

125. Gypsum Plaster & Stucco Co. v. Circuit Judge, 97 Mich. 631; Van Norman v. Circuit Judge, 45 Mich. 204; Newbury v. Detroit etc. Iron Co., 17 Mich. 141.

126. James v. Pontiac & Groveland P. R. Co., 8 Mich. 91-94.

§114. Evidence.

By statute in Michigan, a member may testify against the corporation¹²⁷, but the admissions of a member not a party to the record are not receivable, unless made concerning some transaction in which the member was the authorized agent of the company¹²⁸. Proof of the incorporation of any domestic company need not be made, unless the question is raised by a plea in abatement¹²⁹. In any proceeding, civil or criminal, evidence that the company is doing business under a certain name is *prima facie* proof of legal incorporation and existence¹³⁰. Acts of incorporation need not be recited in pleadings, except by title and date of approval¹³¹. Judicial notice will be taken of the provisions of enabling acts of this State¹³², but not of foreign statutes¹³³. Proof of foreign statutes is reduced to the utmost simplicity consistent with safety. Printed copies purporting to be published by authority of the State government from which they emanate are admissible¹³⁴. Whether or not the printed statute offered purports to be published by authority is a question to be determined upon inspection by the trial court¹³⁵. The presumption is that the statute thus offered in evidence is still in force¹³⁶.

Where it is shown that a corporation has come into existence,

127. C. L. 1897, Sec. 10178.

128. C. L. 1897, Sec. 10177.

129. C. L. 1897, Sec. 10471.—“In suits brought by a corporation created by or under any statute of this state, it shall not be necessary to prove, on the trial of the cause, the existence of such corporation, unless the defendant shall have pleaded in abatement, or given notice under his plea to the action, that the plaintiffs are not a corporation, and annex thereto an affidavit of the truth of such plea or notice.”

130. C. L. 1897, Sec. 10194.—“In any suit or proceeding, civil or criminal, hereafter instituted in any of the courts of this state, wherein it shall become material or necessary to prove the incorporation of any company or corporation, or the existence of any joint stock company or association, whether the same be a foreign or domestic corporation, company, or association, evidence that such corporation, company, or association is doing business under a certain name shall be *prima facie*

proof of its due incorporation or existence pursuant to law, and of its name.” Canal Street Gravel Road Co. v. Paas, 95 Mich. 376; Wilson Sewing Machine Co. v. Spears, 50 Mich. 534; Lake Superior Building Co. v. Thompson, 32 Mich. 293; Garton v. Union City National Bank, 34 Mich. 279. The early rule as to all corporations was that their existence must be affirmatively shown under a plea of general issue. Owen v. Farmers Bank, 2 Doug. (Mich.) 133; Farmers & Mechanics' Bank v. Troy City Bank, 1 Doug. (Mich.) 457-465.

131. C. L. 1897, Sec. 10473.

132. C. L. 1897, Sec. 10172; Chapman v. Colby, 47 Mich. 46-51.

133. C. L. 1897, Sec. 10173; Worthington v. Hanna, 23 Mich. 534; Great Western Ry. Co. v. Miller, 19 Mich. 314.

134. C. L. 1897, Sec. 10173.

135. Gray v. Gibson, 6 Mich. 320.

136. People v. Calder, 30 Mich. 85.

its existence is presumed to continue¹³⁷. Members are presumed to know the contents of enabling acts, for every one is bound to know the law¹³⁸. They are also presumed to know the contents of articles of association, for these are public records¹³⁹. When members deal with the corporation in the relation of stockholders, they are charged with knowledge of the by-laws¹⁴⁰. But this presumption is not extended to cases where members deal with the corporation as strangers might¹⁴¹.

Courts take judicial notice of the charter powers conferred by law upon a domestic corporation¹⁴². But the powers of a foreign corporation must be proven¹⁴³. Of these the charter itself is the best evidence¹⁴⁴. The purposes of a domestic corporation formed under a general law are to be proved by introducing its articles of association into evidence¹⁴⁵.

Corporate books, like those of a private individual, are admissible to prove payments made by the corporation¹⁴⁶. A corporate contract, within the usual powers of the company is presumed to be valid if regularly executed¹⁴⁷. But extraordinary contracts must be established by proof of authority or ratification¹⁴⁸. A corporate deed is proof of its own contents, but not of antecedent requirements¹⁴⁹. But a deed or other corporate instrument executed under seal of the corporation is presumptively executed as a corporate act and by proper authority¹⁵⁰. If the corporation has no seal, a scroll or other device¹⁵¹ may be used as a corporate seal and with like effect¹⁵², provided that

137. *Attorney General v. Mich. State Bank*, 2 Doug. (Mich.) 358-363.

138. *Goss v. Peters*, 98 Mich. 112-116.

139. *Goss v. Peters*, Id.

140. *Marshall's Corp.*, p. 885.

141. *Pearsall v. Western Union Telegraph Co.*, 124 N. Y. 256.

142. *Chapman v. Colby*, 47 Mich. 46-51; *People v. River Raisin & L. E. R. Co.*, 12 Mich. 389.

143. *Chapman v. Colby*, Id.; *Kermott v. Ayer*, 11 Mich. 181.

144. *Chapman v. Colby*, Id.

145. *Attorney General v. Lorman*, 59 Mich. 157. *Detroit Driving Club v. Fitzgerald*, 109 Mich. 670.—Production of a special charter and proof of acts of user under it establish corporate existence. *Jhons*

v. People, 25 Mich. 500; *Swartwout v. Mich. Air Line R. Co.*, 24 Mich. 389; *Cahill v. Kalamazoo Mut. Ins. Co.*, 2 Doug. (Mich.) 124-132; *Way, Receiver, v. Billings*, 2 Mich. 397.

146. *Canther v. Jenks*, 76 Mich. 510-515.

147. *Eureka Iron & Steel Works v. Bresnahan*, 60 Mich. 332; *Holloway v. School District*, 62 Mich. 153.

148. *Ante*, Sec. 82.

149. *Marquette, Houghton & Ontonagon R. Co. v. Atkinson*, 44 Mich. 166.

150. C. L. 1897, Sec. 10198; *Gray v. Waldron*, 101 Mich. 612-616; *Merrill v. Montgomery*, 25 Mich. 72-76; *Benedict v. Denton, Walk. Chan.* (Mich.) 336.

151. C. L. 1897, Sec. 9005.

152. *Ismon v. Loder*, 135 Mich. 345-350.

the court can say from examination of the whole instrument that the intent to use the scroll or other device as a seal is apparent¹⁵³. Where records are kept, they are the best evidence of the corporate acts recorded¹⁵⁴. They are in the nature of declarations by the corporation¹⁵⁵. But parol evidence is admissible to show that the records are incomplete¹⁵⁶, or that the action taken was merely for the purpose of obtaining a consensus of opinion, and was not to be intended to become binding¹⁵⁷. In all cases where the law does not require a record to be kept and where there is no record, or where the record is incorrect or incomplete, parol evidence is admissible to show what was done¹⁵⁸.

The authority of an agent conferred by parol may be proved by parol¹⁵⁹. The official character of officers, when not directly in issue, may be shown by oral evidence¹⁶⁰. Conversations and discussions carried on by a board of directors in arriving at a decision are not provable as expressions of the corporation. The corporation speaks through motions and resolutions regularly adopted, or through definite acts in which the directors concur expressly, or by irresistible implication¹⁶¹.

Where the statute requires notice as a condition precedent to a meeting for the purpose of taking some specified corporate action, the minutes of such meeting are not admissible for the purpose of showing the action taken, until proof has first been made that the meeting was held pursuant to the notice required by law¹⁶², or that such notice was waived by all who were entitled to insist upon it¹⁶³.

For the purpose of fixing liability upon a stockholder, proof of his own admission that he held stock at a certain time, supported by introduction of the stock books of the company to show that no subsequent transfer had been made before the lia-

153. *Ismon v. Loder*, Id. See also *Regents of University v. Detroit Y. M. S.*, 12 Mich. 138.

154. *People v. Oakland County Bank*, 1 Doug. Mich. 232.

155. *Kalamazoo Novelty Co. v. Macalister*, 40 Mich. 84-88; *Taymouth v. Koehler*, 35 Mich. 21.

156. *Peek v. Detroit Novelty Works*, 29 Mich. 313.

157. *Peek v. Detroit Novelty Works*, Id.

158. *Ismon v. Loder*, 135 Mich. 345.

159. *Odd Fellows v. First Na-*

tional Bank, 42 Mich. 461; *Jhons v. People*, 25 Mich. 498-502; *Detroit v. Jackson*, 1 Doug. Mich. 106.

160. Title to office can not be questioned collaterally. *Jhons v. People*, 25 Mich. 498; *Druse v. Wheeler*, 22 Mich. 439.

161. *Kalamazoo Novelty Mfg. Co. v. Macalister*, 40 Mich. 84-89; *Peek v. Detroit Novelty Works*, 29 Mich. 313.

162. *Rodgers v. Wells*, 44 Mich. 411.

163. *Cook's Corp.*, Sec. 599.

bility attached, *prima facie* establishes the relation¹⁶⁴. Where suit is brought upon a stock subscription obtained by mere strangers, proof is necessary to show how the subscription came into the possession of the company. There is no presumption that the company is bound by such a subscription, or that it became possessed thereof rightfully and before commencement of suit. These are matters requiring affirmative proof, and its absence will be fatal¹⁶⁵.

A judgment purporting to be rendered for a debt of a corporation is at least *prima facie*, if not conclusive, evidence that a debt existed¹⁶⁶. Admissions of a corporate agent, made in the course of his employment and in relation to matters over which he has authority, bind the corporation¹⁶⁷. But admissions made by an officer or agent of a corporation outside the scope of his authority are merely private statements and the corporation is not bound by them¹⁶⁸. It follows that such admissions are not admissible for the purpose of establishing liability on the part of a corporation.

The rule that a witness is not permitted to testify in his own interest as against one whose lips are closed in death, extends to cases where the opposite party offers testimony as to matters equally within the knowledge of a deceased officer or agent of the corporation¹⁶⁹. But the statute does not apply where the subject matter of the testimony offered is equally within the knowledge of a surviving officer¹⁷⁰.

Corporate officers can not testify as to matters equally within the knowledge of a deceased opposite party¹⁷¹. This principle is carried to the extent of excluding the testimony of officers of an insurance company, as to matters equally within the knowledge of the deceased assured, in a suit brought by his beneficiary¹⁷².

164. *Tilden v. Young*, 39 Mich. 58.

165. *Parker v. Northern Central M. R. Co.*, 33 Mich. 22-27.

166. *Grand Rapids Savings Bank v. Warren*, 52 Mich. 557-561.

167. *Allington & Curtis Co. v. Reduction Co.*, 133 Mich. 427-435; *Kimball & Austin Mfg. Co. v. Vroman*, 35 Mich. 310.

168. *Rice v. Peninsular Club*, 52 Mich. 87; *Kalamazoo Novelty Co. v. Macalister*, 36 Mich. 326; *Peek v. Detroit Novelty Works*, 29 Mich.

313; C. L. 1897, Sec. 10177.

169. C. L. 1897, Sec. 10212; *Peoples National Bank v. Wilcox*, 136 Mich. 567-572; *Sheldon v. Michigan etc. Ins. Co.*, 124 Mich. 303-308; *Baumann v. Salt & Lumber Co.*, 94 Mich. 363; *Rayburn v. Lumber Co.*, 57 Mich. 273.

170. *Lyttle v. Chicago & W. M. Ry. Co.*, 84 Mich. 289.

171. *Wallace Fraternal Mystic Circle*, 127 Mich. 387; *May v. Ullrich*, 132 Mich. 6.

172. *Krause v. Assur. Society*, 99

An agent is not precluded from testifying to matters equally within the knowledge of a deceased officer, when the agent had no authority with reference to the matter concerning which he offers testimony¹⁷³.

Mich. 461; *Singer Mfg. Co. v. Benjamin*, 55 Mich. 330; *Wallace v. Mystic Circle*, 121 Mich. 263. The word "equally" as used in this statute (C. L. 1897, Sec. 10212) does not relate to the degree of knowledge, but means "known alike" to the parties, and excludes the evidence of a living party when the facts upon

which he offers to testify were known to a deceased party.—*Kimball v. Kimball*, 16 Mich. 211-215.

173. *Wallace v. Mystic Circle*, 121 Mich. 263-267; *Brennan v. Railroad Co.*, 93 Mich. 156; *Waterman Real Estate Exchange v. Stephens*, 71 Mich. 104.

PART TWO The Annotated Act

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- §217. Amendments Increasing or Diminishing Capital Stock.
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- §222. Consolidated Corporation Law—Section Relating to Recording Fees.
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- §269. Preferred Stock.
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- §279. Consolidated Corporation Law—Section Relating to Included Acts.
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TITLE.

AN ACT TO REVISE AND CONSOLIDATE THE LAWS PROVIDING FOR THE INCORPORATION OF MANUFACTURING AND MERCANTILE COMPANIES, OR ANY UNION OF THE TWO, AND FOR THE INCORPORATION OF COMPANIES FOR CARRYING ON ANY OTHER LAWFUL BUSINESS, EXCEPT SUCH AS ARE PRECLUDED FROM ORGANIZATION UNDER THIS ACT BY ITS EXPRESS PROVISIONS, AND TO PRESCRIBE THE POWERS AND FIX THE DUTIES AND LIABILITIES OF SUCH CORPORATIONS.

Act 232 Public Acts 1903.

§115. Constitutionality of Act.

The constitutionality of this act has been tested and sustained.—Grimm v. Secretary of State, 137 Mich. 134, decided July 7, 1904. The ground of attack was,

(a) That the title of the act does not reasonably announce the object of the law; and

(b) That the object of the law is not a single one, consistent with its general purpose.

For these alleged defects it was claimed that the act was violative of Article IV, Sec. 20, of the State Constitution of 1850, then in force. (The same constitutional provisions are to be found, re-enacted, in the State Constitution of 1908, Art. V, Sec. 21). The constitutional provision claimed to have been violated by the act was (and is) as follows:

"No law shall embrace more than one object, which shall be expressed in its title."

In deciding the case, Chief Justice Moore said: "We think the purpose of the act was to provide a general law under which the corporations named in it might be organized and brought under one general rule, instead of incorporating under several laws, as they were required to do before the act became a law. *We conclude the law is a valid one.*....." See also *Jenking v. Osmun*, 79 Mich. 305.

For an opposite conclusion reached under similar constitutional and statutory provisions, see *Lewis v. Dunne*, 134 Cal. 291, 55 L. R. A. 833.

§116. The Term "Consolidate".

"The use of the word '*consolidate*' indicates very clearly that the purpose of the legislature was to collect in one act the law relating to the subject." *Graham v. Muskegon County Clerk*, 116 Mich. 571-572; *Robert's Case*, 51 Mich. 548.

§117. Application of Act.

This act is applicable only to corporations formed for pecuniary profit.—*American Matinee Ass'n v. Sec'y of State*, 140 Mich. 579. Associations not for profit, and having no capital stock, except religious organizations and institutions of learning, provided for in Act 39 of 1855, and societies for the prevention of cruelty to children, and organizations of the Independent Order of Odd Fellows, should be incorporated under Act 171 of Public Acts 1903, as amended in 1905 and 1909. *This act has been held constitutional.*—*American Matinee Ass'n v. Sec'y of State*, 140 Mich. 579-582.

§118. Consolidated Corporation Law.—Section Relating to Corporate Purposes.

THE ACT.

Section 1. The People of the State of Michigan enact: Any three or more persons desiring to become incorporated for the purpose of carrying on any manufacturing or mercantile business, or any union of the two, or for buying, selling and breeding cattle, sheep and horses, or other live stock, or for engaging in maritime commerce or navigation, or for the purchasing, hold-

ing and dealing in real estate, or for conducting a warehouse and storage business, or for erecting and owning buildings to be occupied or leased for dwelling houses, halls, or business purposes, or for the production and supplying of gas and electricity for lighting, fuel or other purposes, or for printing, publishing and bookmaking, or for carrying on any other lawful business, except such as are excluded by section thirty-six of this act, may, by complying with the provisions of this act, with their successors and assigns, become a body politic and corporate.

§119. Scope of the Act.

The nine organic acts consolidated in this law (See Sec. 279 post) are as follows:

C. L. 1897, Chap. 158 relating to buying, selling, breeding and raising stock and poultry;

C. L. 1897, Chap. 181 relating to maritime commerce and navigation;

C. L. 1897, Chap. 182 relating to dealing in land;

C. L. 1897, Chap. 183 relating to constructing, owning and operating warehouses;

C. L. 1897, Chap. 185 relating to constructing, owning and leasing buildings;

C. L. 1897, Chap. 188 relating to manufacturing;

C. L. 1897, Chap. 190 relating to gas lighting;

C. L. 1897, Chap. 191 relating to electric lighting;

C. L. 1897, Chap. 192 relating to printing and publishing.

In addition to these purposes, corporations "for carrying on *any* other lawful business, *except* such as are excluded by Section 36 (See. 277, post) of this act", are authorized. This provision, taken in conjunction with the announcement in the title that the act is intended to be applicable to "any other lawful business" except as precluded by "*its express provisions*," together with the legislative intent plainly apparent from the four corners of the act, including the fact that certain *express* exclusions have been made, warrants the practical construction adopted by the Department of State, which is, that *corporations for all lawful business purposes, not expressly excluded, may be organized under this act*. And all corporations which may be organized under this act *are denied the right to organize under any other act*, except by legislative permission, subsequently given. Section 37 (See Sec. 279 post) of the act requires, that, "All corporations hereafter organized for any of the purposes provided for in this act, shall incorporate under this act." This provision is valid.—American Matinee Ass'n v. Secretary of State, 140 Mich. 579-582.

Either by way of subsequent enabling acts (See Act 85 of 1905, p. 114 relating to Pythian Building Associations) or by express authorization to organize under some other act (see Act 167 of 1907, p. 221, relating to Oil Companies) the legislature has, in a few instances, and for valid reasons,

permitted deviation from the rule announced in Section 37, above quoted. But nothing has been done that seriously infringes upon the scheme of uniform organization established by the consolidated corporation law.

§120. Excluded Purposes.

The language of Section 37, which, taken without modification, would require all corporations for lawful business purposes to organize under this act, is restricted in a very pronounced degree by Section 36, which provides that, "This act shall not include, nor apply to, any of the corporations provided for in the following statutes," which, for the sake of convenience, are here appended, viz.:

| | Chapter
C. L. 1897 |
|--|-----------------------|
| Art Associations | 221 |
| Asylum Associations | 224 |
| Athletic Associations | 207 |
| Automatic Fire Alarm Companies | 229 |
| Banking Companies | 161 |
| Benevolent Societies | 222 |
| Biographical Societies | 221 |
| Boards of Trade | 184 |
| Boom Companies | 172 |
| Bridge Companies | 173-174 |
| Builders' & Traders' Exchanges | 203 |
| Building & Loan Associations | 206 |
| Business Men's Associations | 184 |
| Canal Companies | 178 |
| Cemetery Companies | 227 |
| Chambers of Commerce | 184 |
| Charitable Schools and Societies | 222-223 |
| Christian Associations | 226 |
| Collection Companies | 229 |
| Deposit Companies | 162 |
| Detective Associations | 229 |
| Ecclesiastical Organizations | 225 |
| Engineering Societies | 221 |
| Equal Suffrage Associations | 229 |
| Ferry Companies | 173-175 |
| Fidelity Companies | 196 |
| Firemen's Associations | 229 |
| Fraternal Associations | 211-212-217 |
| Harbor Companies | 178 |
| Historical Associations | 221 |
| Hospital Associations | 224 |
| Industrial Organizations | 215 |
| Institutions of Learning | 218-219 |

| | |
|---|---------------------------------|
| Insurance Companies... | 193-194-196-197-198-199-200-201 |
| Investment Companies | 163 |
| Labor Organizations | 202 |
| Library Associations | 220 |
| Literary and Lyceum Associations | 221 |
| Loan Companies | 163 |
| Log Driving Companies | 172 |
| Lumbermen's Exchanges | 184 |
| Manufacturing & Mining (together)..... | 186 |
| Messenger Service Companies | 177 |
| Military Associations | 229 |
| Mining Companies | 186-187 |
| Musical Societies | 221 |
| Mutual Benefit Associations | 204-205 |
| Nurses' Training Schools | 229 |
| Partnership Associations | 160 |
| Patriotic Associations | 213-214 |
| Philanthropic Associations | 221 |
| Pipe Line Companies | 171 |
| Plank Road Companies | 173 |
| Polytechnic Associations | 221 |
| Professional Associations | 208-209-210 |
| Prevention of Cruelty Associations..... | 229 |
| Rafting Companies | 172 |
| Railroad Companies | 164-167-168 |
| River Improvement Companies | 179 |
| Sanatorium Companies | 229 |
| Scientific Associations | 221 |
| Secret Societies | 217 |
| Smelting Companies | 187 |
| Social Clubs | 211 |
| Sportsmen's Associations | 207 |
| Summer Resort Associations | 207 |
| Telephone Companies | 176-177 |
| Telegraph Companies | 176 |
| Temperance Societies | 216 |
| Trades Unions | 202-203 |
| Train Railway Companies | 167 |
| Trust Companies | 162 |
| Union Depot Companies | 164-166 |
| Vault Associations | 228 |
| Water Power Companies | 180 |
| Water Supply Companies | 229 |

In view of this extensive list of enabling laws excluded by the terms of Section 36 of the act, the statement of Justice Hooker, in *Goodrich v. Hackley-Phelps-Bonnell Co.*, 141 Mich., 343-344, is well sustained: "It is a broad act, evidently designed to be complied with in the future incorporation

of companies for a variety of purposes, but by no means includes all purposes."

§121. Limited Partnership Associations Excluded.

The most important enabling law excluded by Section 36 of the consolidated act, is Chapter 160 of the Compiled Laws of 1897, relating to Partnership Associations, Limited. Probably this chapter would have been excluded by construction, had it not been excluded expressly, as the legislature has never recognized these associations as corporations.—Attorney General v. McVichie, 138 Mich. 387-390. With the "Limited" act still in force, there are, in effect, two enabling acts under which organizations for any lawful business purpose may be formed. Instances are not wanting in which the latter act will be found the more convenient of the two.

§122. Exclusions by Construction.

It being the plain intent of the legislature that the consolidated act shall enable the formation of corporations for all business purposes not expressly excluded, the question of construction, in this particular, would seem to be solved. For all technical rules of construction must yield to the legislative intent.—Michigan Central R. Co. v. State, 148 Mich. 151-156.

There is, however, a principle of construction which limits the meaning of the words "any other lawful business," and, as this limitation is in harmony with the evident intent of the legislature, it is applicable. The principle to which reference is made is this, that when, as in Section 1, and also in the title of this act, specified purposes are enumerated, followed by a general expression, such as, "any other lawful business," the general expression is limited to purposes of *like kind*—purposes *ejusdem generis*.—American Transportation Co. v. Moore, 5 Mich. 368-385; Hawkins v. Great Western R. R. Co., 17 Mich. 57; Brooks v. Cook, 44 Mich. 617-619; Roberts v. Detroit, 102 Mich. 64-67; Rockland Water Co. v. Water Co., 80 Me. 544, 1 L. R. A. 388; Thomp. Corp. Sec. 8153.

The enumerated purposes being gainful, the purpose mentioned in general terms must be of like kind. This is probably the full extent to which the principle of *ejusdem generis* is applicable to the title and first section of the act.

§123. Who May Become Incorporators.

The expression "any three or more persons" clearly refers to natural persons capable of making a binding contract. As was said by Justice Graves, in Hockgraef v. Milward, 38 Mich. 469-473, "There is no rule for construing these acts for the voluntary organization of private corporations so liberally as to include, among the parties allowed to become incorporated, any who are not plainly made competent."

There is, however, some authority for saying, that where the required number of competent persons have executed the articles, the formation of a corporation *de jure* is not prevented by the fact that the articles have

been also executed by firms and other corporations.—*City of Kalamazoo v. Power Co.*, 124 Mich. 74-82.

§124. Manufacturing.

"The purpose of carrying on any manufacturing" is to be given a broad interpretation.—*Attorney General v. Lorman*, 59 Mich. 157-164. The present act is well within the policy announced by Justice Champlin in this case: "The statute, which was designed to foster and encourage manufactures, should receive a liberal construction, and one in harmony with the public interests; and while it was not enacted to lend aid to trivial and unworthy objects, it should not be restricted in its operation to exclude such purposes as tend to promote the public convenience or necessities."

Manufacturing consists in making, by labor and skill—usually aided by mechanical means—from materials which have already undergone some physical change, a useable product, artificial in composition or form. It is believed that the foregoing definition, as well as any, expresses the meaning of the term "manufacturing" within the meaning of the act, and in harmony with the decisions.—See *People v. Collins*, 3 Mich. 343-385; *Attorney General v. Lorman*, 59 Mich. 157-163; *Williams v. Warren*, 72 N. H. 305, 64 L. R. A. 33-69.

Not every enterprise employing labor, skill and machinery in changing the form or condition of material is "manufacturing." In an elaborate note to the decision of the Supreme Court of New Hampshire, in the case of *Williams v. Warren*, 64 L. R. A., 33-69, the case law of this subject is collated. From this note the following is quoted:

"The work of the manufacturer begins as soon as that of the miner, the woodsman, the farmer and the planter ends. Coal mined and stone quarried from the earth, needing only breaking into sizes suitable for use; oil pumped and gas caught escaping through the soil and held in tanks for distribution by measure; trees felled in the forest and cane cut in the brake, and hauled to mills; grain reaped and grass mowed in the field and meadow and stored in barns; and water from lakes and rivers impounded in reservoirs—are plainly not manufactured."

"Manufacturing generally consists in giving new shapes, new qualities or new combinations to matter which has already gone through some artificial process." *Norris Bros. v. Commonwealth*, 27 Pa. 494. From this it follows that "the manufacturer, as such, may generally be distinguished by the fact that he stands between the original producer and the dealer or consumer, and that he depends for his profit upon the labor bestowed upon the raw material."—*State v. Dupre*, 42 La. Ann., 561.

The following named industries have been held to be manufacturing:

Cutting and storing river and lake ice.—*Attorney General v. Lorman*, 59 Mich. 157-165. *Contra*, *People v. Knickerbocker Ice Co.*, 99 N. Y. 181.

Producing salt by evaporating brine.—*East Saginaw Mfg. Co. v. Saginaw*, 19 Mich. 259.

Producing coke from coal.—*Commonwealth v. Juniata Coke Co.*, 157 Pa. 507, 22 L. R. A. 232.

- Milling.—*Carlin v. Western Assurance Co.*, 57 Md. 515.
 Oil Refining.—*Hawes v. Anglo-Saxon Petroleum Co.*, 101 Mass. 385.
 Brewing.—*Commonwealth v. Germania Brewing Co.*, 145 Pa. 83.
 Gas-making.—*Nassau Gaslight Co. v. Brooklyn*, 89 N. Y. 409.
 Electric lighting.—*People v. Wemple*, 129 N. Y. 543, 14 L. R. A. 708.
Contra, *Frederick Electric Light & Power Co. v. Frederick City*, 84 Md. 599, 36 L. R. A. 130.
 Saw milling.—*State v. Wibert's Sons Lumber Co.*, 51 La. Ann. 1223.
 Stave-making.—*United States v. Hathaway*, 4 Wall. 404, 18 L. ed. 395.
 The following named industries have been held not to be manufacturing:
 Laundering.—*Commonwealth v. Keystone Laundry Co.*, 203 Pa. 239.
 Mining.—*Byers v. Franklin Coal Co.*, 106 Mass. 131.
 Making and storing hay.—*Frazee v. Moffit*, 18 Fed., 584.
 Coffee roasting.—*Union Pacific Tea Co. v. Roberts*, 145 N. Y. 375.
 Ice cream making.—*New Orleans v. Mannessier*, 32 La. Ann. 1075.
 Bread making.—*State v. Eckendorf*, 46 La. Ann. 131.

§125. Mercantile Business.

The power to conduct a "mercantile business," confers authority to engage in all lawful merchandising, both at wholesale and at retail.

§126. Joinder of Manufacturing and Mercantile Purposes.

Manufacturing, as a purpose, carries with it the implied power to buy raw materials, to work upon them, and to sell the finished product. But it often becomes convenient for the manufacturer to deal in commodities that he does not produce and upon which he does no work. This latter is purely mercantile business. Since the statute expressly permits manufacturing and mercantile business to be united, it is usually best to join these two purposes in the articles of association, thus providing for unascertained future needs by broadened corporate powers.—See *Chewacla Lime Works v. Dismukes*, 87 Ala. 344, 5 L. R. A. 100.

When mercantile purposes are joined with manufacturing for the purpose of conducting a "company store," it is well to bear in mind the provisions of C. L. 1897, Sec. 5489, 5490, 5491, prohibiting the giving of orders payable in anything other than money, except by consent of the employee.

§127. Live Stock.

The term live stock embraces domestic animals used or raised upon farms.—*Webster*. Clearly such animals as mules, goats, swine and poultry are included. The words "other live stock" are limited by the rules of construction to other domestic live stock.—See *Roberts v. City of Detroit*, 102 Mich. 54-67. It follows that this provision of the act does not extend to bees. (See *Parsons v. Manser*, 62 L. R. A. 132 n.). But corporations to raise bees may be formed under the general enabling provision of the act.

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§128. Maritime Commerce.

Maritime Commerce consists in shipping goods by sea. The Great Lakes and the straits (improperly called rivers) connecting them are maritime. As was stated by Justice Campbell, in *American Transportation Co. v. Moore*, 5 Mich. 368-396, "These lakes are in truth inland seas."

§129. Navigation.

Navigation is the act of passing on water in ships and other vessels.—*Webster*. The term applies to all kinds of craft propelled in any manner on any waters whatsoever.

§130. Joinder of Maritime Commerce and Navigation.

The purposes of maritime commerce and navigation may be united in one corporation. When this is done, the corporation will clearly have power to engage in commerce on the seas, or to act as a carrier of goods and passengers on both inland and maritime waters, but unless the language of the act shall be enlarged by construction, such corporation will not have power to engage as a trader (i. e., to carry on commerce) on inland, non-maritime waters.

§131. Dealing in Real Estate.

Dealing in real estate implies power to act, both for the corporation and as the agent for others, in buying and selling real estate, managing it, leasing it and collecting the rents.—*Marshall's Corp.*, p. 237.

§132. Erecting and Owning Buildings.

This object of the act was intended to accommodate those who desire to acquire, improve and more or less permanently hold real estate, as distinguished from those who merely deal or speculate in it. It was not intended to apply to mere construction companies. These may be organized under the general clause of the act.

§133. Light, Heat and Power Companies.

Corporations formed under this act for these purposes have power to receive and exercise such franchises in streets, ways and public lands as are necessary to attainment of the corporate objects.—*Wyandotte Elec. Light Co. v. Wyandotte*, 124 Mich. 43, and cases there cited. See also Sec. 37 of act (as amended in 1905) which expressly provides that: "Any corporation mentioned or referred to in this section which, under the law under which it was organized, had the right or power to use the streets, lands and squares of any city, town or village for its corporate purposes, with the consent of the municipal authorities thereof, and under such reasonable regulations as they might prescribe, shall continue to have such right or power under this act as they enjoyed at the time of the passage of act

number two hundred thirty-two of the Public Acts of nineteen hundred three, of which this act is an amendment."

§134. Acquiring Water Power.

There is no doubt that a corporation formed under this act for manufacturing, or for electric power purposes, and requiring the use of power in the accomplishment of its objects, may purchase a developed water power, or, after securing the necessary riparian rights and proper permission, may develop a water power for itself. It is difficult to see much difference in principle between the purchase of a water power and the purchase of a steam engine. Moreover, as stated by Judge Thomson: "The courts are liberal in upholding the power of corporation to employ their funds in the aid of collateral objects for the purpose of improving their own property or business."—7 Thom. Corp., Sec. 8369; *Stradley v. Cargill Elevator Co.*, 135 Mich. 367.

§135. Printing, Publishing and Bookmaking.

The object, "printing, publishing and bookmaking" is, of course, to be construed in the natural sense of these words. Thus, although "publishing," in its generic meaning, includes all means by which anything is made public, the right to maintain and operate *billboards* as a *principal* business, would not be conferred upon a corporation formed under this act for the purpose of "publishing." Clearly enough a company for the purpose of operating a general advertising and billboard business might be organized under the "any lawful business" clause, or billboards might be operated *as an incident* of the printing and publishing business.

"Printing" is construed to include the multiplication of words, figures, illustrations and designs by any mechanical means, including lithography and other special processes, incident to the printing and publishing business.

§136. "Any Other Lawful Business, Except" as Excluded.

Incorporation for every lawful, profit-earning business not expressly excluded by the act (Act Sec. 36) is authorized under this statute. The purpose must be clearly stated in the articles and must be single in the sense that the expressly authorized purposes are single. It must represent one general undertaking, for example, the conducting of a livery business in all its branches. It would not be permissible to attempt to join the business of undertaking with the livery business, however closely they may be allied.

§137. Joinder of Purposes.

The joinder of dissociated purposes, when not authorized, is unpermissible. The reason is, that such joinder would set up a corporation not warranted by the act. The result would be intolerable confusion. For

example, companies might be formed to produce gas and deal in real estate. Moreover, if two dissociated purposes might be joined, why not more than two? Why not all? If it were permitted, nearly every corporation formed would claim every purpose mentioned in the act. The associated purposes authorized are,

- I. Manufacturing and mercantile business,
- II. Buying, selling and breeding cattle, etc.,
- III. Maritime commerce and navigation,
- IV. Purchasing, holding and dealing in real estate,
- V. Warehouse and storage business,
- VI. Erecting and owning buildings to be used or let, etc.,
- VII. Production of gas and electricity,
- VIII. Printing, publishing and bookkeeping.

As to each other, all of these purposes are dissociated, and no two or more of them may be united.

§138. Consolidated Corporation Law.—Section Relating to Articles of Association.

Section 2. The articles of association of every such corporation shall be made on suitable and uniform blanks which it is hereby made the duty of the Secretary of State to furnish on application free of charge, or upon blanks substantially uniform approved by the Secretary of State, which articles shall be signed by the persons associating in the first instance and acknowledged before some person authorized by the laws of this state to take acknowledgments of deeds, and shall state:

First, the name assumed and by which the corporation shall be known in law: Provided, No name shall be assumed already in use by any other existing corporation of this state, or corporation lawfully carrying on business in this State, or so nearly similar as to lead to uncertainty or confusion;

Second. Distinctly and definitely, the purpose or purposes for which the corporation is formed, and it shall not be lawful for said corporation to divert its operations, or appropriate its funds to any other purpose, except as hereinafter provided:

Third. The principal place or places at which its operations are to be conducted;

Fourth. The amount of the total authorized capital stock, which shall not be less than one thousand dollars, and not more than twenty-five million dollars; the amount of capital stock subscribed, which shall not be less than fifty per cent of the authorized capital stock; the articles may provide for common and preferred stock subject to section thirty-five, and in that

case shall contain an exact statement of the terms upon which the common and preferred stocks are created, and the amount of each subscribed, and the amount of each paid in;

Fifth. The number of shares into which the capital stock is divided, which shall be of the par value of ten dollars or one hundred dollars each;

Sixth. The amount of capital stock paid in at the time of executing the articles, which shall not be less than ten per cent of the authorized capital, and in no case less than one thousand dollars, except in case of a capitalization of two thousand dollars or under, when it shall be twenty-five per cent thereof, and the amount so paid in shall not be reduced below such per cent of its capital.

Such capital stock may be paid in, either in cash or in other property, real or personal; but where payment is made otherwise than in cash there shall be included in the articles an itemized description of the property in which such payment is made, with the valuation at which each item is taken, which valuation shall be conclusive in absence of actual fraud;

Provided, That only such property shall be so taken in payment for capital stock as the purposes of the corporation shall require, and only such property as can be sold and transferred by the corporation, and as shall be subject to levy and sale on execution, or other process issued out of any court having competent jurisdiction, for the satisfaction of any judgment or decree against such corporation:

And Provided Further, That there shall be made and attached to any such articles of association an affidavit by at least three of the organizers of such corporation, that they know the property described in such articles of association and that the same has been actually transferred to such corporation, and that such property is of the actual value therein stated;

Seventh. The place in the state of Michigan where the office of the company is located;

Eighth. The term of years the corporation is to exist, which shall not be to exceed thirty years;

Ninth. The names of the stockholders, their respective residences, and the number of shares subscribed for by each.

The amount of the capital stock and number of shares of every corporation organized under this act may be increased or diminished at any annual meeting of the stockholders, or at a special meeting expressly called for that purpose, by a vote of two-thirds of the capital stock of the corporation.

In voting upon the increase of the capital stock, the stockholders shall have power, by the same statutory majority, to fix the value of, and the price at which, the increase of the capital shall be subscribed and paid for by the stockholders, but not less than par, as well as the time and manner of the subscription and payment, and by the same vote to authorize the directors of the corporation to sell, at not less than the price so fixed, any part of such increase not subscribed by the stockholders, after they have had a reasonable opportunity to make subscription of their proportionate shares thereof; and to make provision for calling in and cancelling the old and issuing new certificates of stock; but nothing herein contained shall in any way operate to discharge any company which may diminish its capital stock, from any obligation or demand that may be due from said company.

When a corporation shall so increase or diminish its capital stock, the president and a majority of the directors shall make a certificate thereof, which shall be signed by them and recorded and returned as provided herein for recording and returning the original articles of incorporation, and such increase or diminution shall commence and be operative from the date when such certificate is recorded in the office of the Secretary of State. Provided, That in order to entitle such certificate to be recorded it must show that at least fifty per cent of the total authorized stock, after such increase, has been subscribed, and that at least ten per cent of the total authorized capital has been actually paid in.

The articles of incorporation, besides defining the purposes for which the corporation is formed, as provided in sub-section second above, may also contain any provision which the incorporators may deem advantageous for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of stock and stockholders: Provided, The same be not inconsistent with this act, or the general statutes of this state regulating corporations.

§139. Making up the Records.

It is good practice, and costs but slight effort, to make up the records of the first meetings and proceedings *in duplicate*. By permission of the company, the attorney in charge should retain one copy, the other being

delivered over to the corporation. The reason for this procedure is that, in the management of all companies,—and particularly in newly organized ones—questions frequently arise which may be answered only by reference to these first records. With an authentic copy at hand, counsel will be able to readily and accurately dispose of queries, the answers to which would otherwise be postponed until the records might be brought in, or else disposed of, in case of urgency, by an opinion based upon recollection. Again, far more frequently than might be supposed, corporate records are lost, destroyed, or even misappropriated. In such cases, access to an authentic duplicate copy may prove of great service.

By the exercise of a little foresight, duplicate records may be produced almost automatically. Articles of association, deeds, contracts, bills of sale, assignments of patents, and the like, of which an original is to be filed or recorded, are made in triplicate. Minutes of first meetings, including the waiver of notice, are made in duplicate. Thus, after the instruments required to be filed or recorded have passed out of his hands, the attorney has still in possession a complete duplicate set of all documents entering into the organization proceedings. These two sets—one for the company and one for the attorney—may be arranged (see sections 468 to 472, post), paged, indexed, and bound at trifling expense. This method of arranging and preserving corporate records is decidedly satisfactory both to the attorney and to his clients.

§140. A Hint About By-Laws.

While the subject of by-laws is reserved for later discussion (See Sec. 204, post), it may not be out of place, in connection with what has just been said concerning the preparation of records, to suggest that by-laws be typewritten *in triplicate*. True, only two copies are required for the duplicate record, but a third may be found very useful in saving the labor of dictation when counsel is next employed to take charge of the formation of a corporation. The best sets of by-laws are a *growth*. They are a product of experience. While no two sets are likely to be precisely the same, there will be great similarity. Very properly counsel will use, again and again, the by-law provisions which have been found adequate under the test of actual use. With each new organization, counsel will endeavor to strengthen his work wherein it seems weak; but among companies organized under the same act for similar purposes, each new set of by-laws will be an adaptation of some prior set. Here appears the usefulness of the extra copy preserved from the last prior organization. It represents counsel's most mature production, because it is his latest. With a few pen-strokes, he may adapt it to the present need, and turn it over to his copyist. The saving of time and labor thus secured is substantial.

§141. Form of Articles of Association.

The articles may be typewritten, but must conform in substance to the blanks furnished by the Secretary of State. For material variance from this they may be lawfully denied record.

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§142. Contents of Articles—Name.

When there is any doubt concerning prior use in this State of a desired corporate name, it is safe practice to submit the proposed name to the Secretary of State to have the point determined in advance of the name's adoption. A corporation of this state may adopt the name of a foreign corporation not doing business in this state.—*Marshall's Corp.*, p. 88. But this course is not to be commended. A corporate name is upon a footing even broader than that of a common law trade mark, and its usurpation will be restrained whenever it operates to mislead the public.—*Lamb Knit-Goods Co. v. Lamb Glove and Mitten Co.*, 120 Mich., 159; *Penberthy Injector Co. v. Lee*, 120 Mich., 174; *Armington v. Palmer*, 43 L. R. A. 95. When a corporation selects its name in order to get another company's business, it is no defense that the name of the former is the name of its chief stockholder.—*Cook's Corp.* Sec. 15 n.

As an example of the line of demarcation between the permissible and the unpermissible use of similar names by corporations, the case of *International Trust Co. v. International Loan & Trust Company of Kansas City, Mo.*, 10 L. R. A., 758, is instructive. The names as set forth above were held not sufficiently similar to mislead, although had the words "of Kansas City, Mo.," been omitted from the name of the defendant, an opposite result would clearly have been reached. A corporation, like an individual, may be known by several names. Parol evidence is admissible to establish identity. *Gratwick, etc., Lumber Co. v. Oscoda*, 97 Mich., 221.

§143. Contents of Articles—Corporate Purpose.

The articles of association afford the sole criterion of the corporate purpose.—*Attorney General v. Lorman*, 59 Mich. 157; *Detroit Driving Club v. Fitzgerald*, 109 Mich., 670. A corporation is confined to the purpose declared in its articles.—*People v. River Raisin & L. E. Railroad Co.*, 12 Mich., 389-396. The purpose stated must be within the terms of the act.—*Stewart v. Father Matthew Society*, 41 Mich. 67. No corporation can exist except by force of express law.—*Schuetzen Bund v. Agitations Verein*, 44 Mich., 313-315.

Under this act a corporation must be formed for one purpose and for one purpose only. To this rule there is a single exception; manufacturing and mercantile purposes may be united. But, while the general purposes authorized must be kept apart, the several elements forming any one of these purposes may be joined. Thus, while the act provides that a corporation may be formed "for engaging in maritime commerce *or* navigation," the purpose may be stated as "engaging in maritime commerce *and* navigation," the two elements together forming but a single purpose.—*People v. Rice*, 138 N. Y. 151.

Purposes are corporate objects. Powers are the means by which those objects are attained. Under this act, the purposes are restricted, but the powers are ample. For example, while a manufacturing corporation

cannot set up purchasing and holding real estate as one of its purposes, it clearly has power to purchase and hold such real estate as its purposes require.—See Sec. 205, post.

When a corporation diverts its capital to purposes other than those mentioned in its articles of association, it may be ousted of its franchises by the State.—*Butterworth & Lowe v. Milling Co.*, 115 Mich., 1-4. In this case, in interpreting a statute containing language identical with that of the act under consideration, referring to diversions of funds, Justice Montgomery said: "The purpose of the statute is the protection of the public and the stockholders." It follows that the statute does not of itself avoid contracts made in violation of the non-diversion provision. See also *Cook's Corp.*, Sec. 3. Such contracts are governed by the rules of law applicable to *ultra vires* transactions.

§144. Contents of Articles—Place of Operation.

The place of operation is the place where the corporation's productive work is to be carried on, as distinguished from the business office, which may be in a wholly different place. In stating the place of operation, it is not sufficient to name merely the county or state. The city, village or township should also be mentioned. There may be more than one principal place of operation; they may be wholly within the state, or wholly outside it, or some of them may be in the state and some outside.

By the great weight of authority, a corporation may carry on its business outside the state of its creation. While it preserves its corporate character in the foreign jurisdiction, it cannot there exercise charter powers inconsistent with the laws or the policy of such foreign state. It is bound by such conditions as the foreign state imposes.—*People v. Howard*, 50 Mich., 239; *Home Insurance Co. v. Davis*, 29 Mich., 238.

§145. Contents of Articles—Capital Authorized.

Were the amount to be subscribed not fixed by the act, subscription of the entire capital stock would be required as a condition precedent to organization.—*Association v. Walker*, 88 Mich., 62-75. Under this act, at least fifty per cent. of the authorized capital stock must be subscribed, and this must appear by the articles of association.

If less than the lawful amount, or less than any amount agreed upon, has been in good faith subscribed, payment of subscription contracts cannot be enforced, unless the condition has been waived.—*Swartwout v. Railroad Co.*, 24 Mich. 388; *Monroe v. Railroad Co.*, 28 Mich., 271; *Association v. Walker*, 88 Mich., 62; *Curry Hotel Co. v. Mullins*, 93 Mich. 318.

§146. Contents of Articles—Classes of Stock.

The preferred stock cannot exceed two-thirds of the whole amount shown by the articles of association to have been actually paid in. Thus, a corporation having an authorization of \$150,000 capital, of which \$90,000

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is shown by the articles of association to have been paid in, will be permitted to have preferred stock to an amount not exceeding \$60,000, or two-thirds its paid up capital.—*Continental Paint Co. v. Secretary of State*, 128 Mich., 621-624. The preferred stock must be subject to redemption at a date certain. When earlier redemption is not desirable, the date of redemption specified may be *the date of expiration of corporate existence*. Preferred stock created under this act cannot participate in the earnings of the corporation beyond the fixed preferential dividend, not exceeding eight per cent. In other words, the preferred stock may be given cumulative eight per cent. dividends, *and no more*. It is within the power of the incorporators to embody in the articles stipulations denying preferred shares the right to vote.—*Marshall's Corp.* p. 598. In the absence of such restriction, the preferred shares are in every way equal to the common shares in voting power.—*Lockhart v. Van Alstyne*, 31 Mich., 75; *Cook's Corp.* Sec. 269. Preferred stock is sometimes designated as "*guaranteed stock*," but the difference is in name only. The corporation cannot become liable to pay dividends unless they are earned.—*Lockhart v. Van Alstyne*, 31 Mich. 75-83.

The description of the preferred stock, embodied in the articles may be substantially as follows:

"Article IV. The capital stock of the corporation hereby organized is the sum of Dollars, of which Dollars shall be common stock, and Dollars shall be preferred stock. The preferred stock shall be subject to redemption at par, plus the accumulated declared dividends, if any, on the day of 19...., and the holder shall be entitled to a dividend of per cent. per annum, payable annually, which shall be cumulative and payable before any dividend shall be set apart or paid on the common stock."

A copy of this provision should be set forth in the certificates of preferred stock.

§147. Contents of Articles—Par Value of Shares.

The par value—or "face value"—of shares is fixed by the statute at \$10 or \$100. Which of these values shall be adopted is optional with the incorporators, but it must be the one or the other.

§148. Contents of Articles—Amount Paid In.

Until the required ten per cent. has been paid in, no *de jure* corporation exists.—*C. H. Little Co. v. Cemetery Association*, 135 Mich. 248-253. Under the act, as amended in 1907, payment must be made either in cash, or in property subject to seizure under judicial process. This *excludes* such intangible property as *secret formulas, unpatented inventions, good will and common law trade marks*. It *includes* patents granted or applied for, copyrights, unprinted manuscript, registered formulas and registered trade marks.—See Act. 146 of 1907, p. 186.

That patent rights and copyrights, while not subject to seizure and sale upon execution, may be subjected in equity to judicial sale for the benefit of judgment creditors, see *Ager v. Murray*, 105 U. S. 126, 26 L. ed. 942; *Stephens v. Cady*, 14 How. 528, 14 L. ed. 528; *Rehfuss v. Moore*, 134 Pa. 426, 7 L. R. A. 663-664; *Brandenburg on Bankruptcy*, Sec. 1177.

As to trade marks, the practice of the Michigan Department of State is to allow them to be included if registered, but to reject them if unregistered. Yet it cannot be doubted that an unregistered trade-mark is property—sometimes very valuable property.—*Smith v. Walker*, 57 Mich. 456. The only question is, whether a common law trade mark can be seized and sold upon judicial process. This point has not been decided by our Supreme Court, nor does the question appear to be well settled anywhere.—*Falk v. American West Indies Co.*, 180 N. Y. App. 445, 1 L. R. A. (N. S.) 704-717, and cases there collected. See also *Williams v. Farrand*, 88 Mich. 473. The better opinion is, that an unregistered trade-mark is merely an emblem of good will, and that it has no existence apart from the business in which it is employed. Standing alone, it has no value. It is incapable of supporting a distinct and separate valuation. Where a going concern is transferred in entirety to a corporation, the trade-mark may be listed in the articles of association as a part of the general assets. The incorporators may add its estimated value to the sum representing merchandise or other tangible property. For example, they may say, "Stock of hardware transferred to said corporation, together with the established business, *trade-mark*, trade name and good^d will of B. & Co. as a going concern, valued at \$10,000." But the trade-mark must not be listed and valued separately.

§149. Contents of Articles—Affidavit of Valuation.

The amendment of 1907 provides, that at least three incorporators shall make affidavit that (a) they know the property described in the articles, (b) that the same has been actually transferred to the corporation, and (c) that the property is of the actual value stated in the articles. This provision serves a useful purpose. In case of false swearing, it is believed that the language of the act, although somewhat loose, would support an action for perjury, under the provisions of C. L. 1897, Sec. 11306.

§150. Contents of Articles—Location of Business Office.

The articles are required to state the location of the corporation's business office for the purpose of establishing a corporate residence, thus fixing the place where the notice of the first stockholders' meeting shall be published, where process may be served, where taxes shall be assessed, and where the secretary and treasurer shall transact corporate business. The corporation is estopped from denying that its residence is as stated in the articles, but the state, at least, may go behind this allegation of domicile and may show the corporation's real residence.—*Detroit Transportation Co. v.*

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Assessors, 91 Mich. 382; Milwaukee Steamship Co. v. Milwaukee, 18 L. R. A. 353; Teagan Transp. Co. v. Detroit, 139 Mich. 1; Detroit v. Lothrop Estate, 136 Mich. 265; Detroit, Ypsilanti, A. A. & J. Ry. v. Detroit, 141 Mich. 3.

§151. Contents of Articles—Duration.

All corporations organized under this act are limited to a duration not exceeding thirty years. Mich. Const. 1908, Art. XII, Sec. 3. But renewals for further periods of not more than thirty years each, are authorized by constitution (*Id.*) and are enabled by statute.—Act. 328 Pub. Acts 1905, p. 506. After expiration, the corporation has three years additional in which to close up its affairs.—C. L. 1897, Sec. 8534; *Bewick v. Alpena Harbor Co.*, 39 Mich. 700-709. As to exclusive right to use its corporate name during the three-year period of liquidation, see *People v. Grand Rapids Sticky Fly Paper Co.*, 144 Mich. 221.

§152. Contents of Articles—Names, Residences and Shares Subscribed.

The names of the incorporators should be written in the body of the instrument by the draftsman. The autographic signatures of the incorporators appearing at the end of the articles should exactly conform in number, spelling and use of initials, to the names as written in the body of the instrument. Every person whose name appears in the articles as a stockholder must subscribe and acknowledge the articles.

An agent or attorney acting under a written power may subscribe in the name of a natural person, his principal. In such case, the power of attorney duly signed and acknowledged by the principal, must be filed and recorded with the articles.

The place of residence to be named is the township, village or city, and the State, where the subscriber resides. The insertion of this item is for the benefit of the public and creditors, to the end that the identity and whereabouts of the subscribers may be readily ascertained. It is immaterial whether they reside within this state or elsewhere. No residential qualification is imposed by the statute.

When there is more than one class of stock, the number of shares of each class taken by each subscriber should be clearly specified. The articles of association form a subscription contract between the corporation and the subscriber, and the subscriber becomes at once a stockholder.—*Dexter v. Millard*, 3 Mich. 91; *Carson v. Arctic Mining Co.*, 5 Mich., 288-292; *Valentine v. Water Power Co.*, 128 Mich. 280-294. Creditors of the corporation are entitled to full benefit of the stockholder's subscription as he has made it by signing the articles.—*Moore v. Universal Elevator Co.*, 122 Mich. 48-58.

§153. Acknowledgment.

There is no corporation, even *de facto*, until articles of association, prepared under a valid law, and stating at least some purpose authorized

by that law, have been duly signed and acknowledged.—*Carmody v. Powers*, 6 Mich. 26-29.

Under this act, corporate existence as against everyone, except the State, begins when lawful articles of association have been in good faith properly signed and acknowledged. The first meeting of stockholders and directors may then be held. The act contemplates that these meetings shall occur before the articles are recorded. It expressly requires the president of the corporation to cause the recording of the articles, and, obviously, prior to these meetings there can be no president.

§154. Amendment—Increase and Decrease of Capital Stock.

A two-thirds vote of the capital stock subscribed and outstanding is required to authorize an increase or decrease of the authorized capital. A two-thirds vote of a mere quorum of stockholders would be insufficient. Unsubscribed stock, and shares held as treasury stock by the company, as well as retired preferred shares, would not enter into the computation in determining the vote required. While the language of the statute is not precise, the expression, "a vote of two-thirds of the capital stock," means *shares entitled to vote*. Any other construction leads to absurdities. Unsubscribed stock is not "capital stock."—*Continental Paint Co. v. Secretary of State*, 128 Mich. 621-625. It is merely stock *authorized*. Treasury stock, whether held by the corporation, or by a trustee in its behalf, has no voting power.—*Marshall's Corp.* p. 905. Preferred shares redeemed by the corporation are *extinguished*.—*Thomp. Corp. Sec.* 3665.

The right of a stockholder to subscribe to his *pro rata* share of the increase is a property right. It may be transferred to, and exercised by, another. Issuance of such *pro rata* shares may be compelled by mandamus. Sale to outsiders in preference over stockholders may be restrained by injunction. These rights exist independently of statute provisions, and are sustained by an unbroken line of authorities.—*Hammond v. Edison Illuminating Co.*, 131 Mich. 79.

The statute expressly provides that the increase shall be sold at "not less than par." Violation of this provision would render the sale *ultra vires*. After payment, the corporation would be estopped to urge the objection, but non-participating stockholders, creditors, and the State could take advantage of the illegal sale.

By unanimous assent of the stockholders, a bonus might lawfully be paid, *from surplus profits*, to subscribers taking the increase shares at par.

The stockholders may fix the price of the increase shares at any figure they may agree upon, at or above par. Should neither the stockholders nor others subscribe for the shares at the price fixed, a less price may be established in like manner. All stockholders, including subscribers to the new issue, if any, must be given a reasonable opportunity to subscribe at the reduced price before the stock may be offered to others.

Under the authorization of this act, capital stock may be reduced by eliminating authorized, unsubscribed shares, or by a voluntary surrender of

shares by some or all of the stockholders, or by purchasing and retiring shares, provided the purchase be made from funds that might be distributed as dividends—i. e. surplus profits. Or, if no rights of creditors intervene, the purchase may be made by exchanging to stockholders assets of the company proportionate to the stock retired. In any event, all stockholders must be dealt with upon a basis of equality, in the absence of waivers.—*Marshall's Corp.* p. 587.

A two-thirds majority may, as against the dissent of the minority, reduce the authorized capital stock and the *pro rata* number of shares in the hands of each stockholder, without distributing any of the assets of the corporation. Under the present act, this right is conferred by the charter contract, to the terms of which each stockholder has given implied assent.—*Joy v. Jackson & M. P. R. Co.*, 11 Mich. 155-171.

This rule would not be applicable to a corporation having preferred shares outstanding, for, in that instance, its operation would be violative of a special contract between the corporation and the preferred stockholder.—*Cook's Corp.* Sec. 493. An amendment detrimental to such rights can be made by unanimous consent only.

Distribution to stockholders of assets corresponding to a reduction of capital stock by amendment, is not such a "withdrawal and refunding" of capital stock as is contemplated by Sec. 21 of this act. It is not technically a withdrawal of capital stock at all.—*Marshall's Corp.* p. 586-587. Yet there can be no doubt that existing creditors might, upon the trust fund theory, after exhausting the property of the corporation, pursue such refunded assets into the hands of the stockholders.—See *American Steel & Wire Co. v. Eddy*, 130 Mich. 266; *Brewer v. Michigan Salt Ass'n.*, 58 Mich. 351; *Lockhart v. Van Alstyne*, 31 Mich. 75.

§155. Certificate of Amendment.

Where the amendment increases or diminishes the *capital stock*, a certificate reciting the action, and, according to best practice, embodying the amendatory resolution, signed by the president and a majority of the board of directors, must be recorded in the same manner as articles of association.

Amendments not increasing or diminishing the capital stock, are to be made in accordance with Sec. 17 (Sec. 214, post) of the act. Thus, Sec. 17 and not Sec. 2 (Sec. 138, ante) of the act, should be followed in changing the number and par value of shares, if unaccompanied by a change in the capital stock. Changes of name, objects, place of operation, location of business office, duration, and changes converting common stock authorized into preferred stock (See Act Sec. 35; Sec. 267, post) are to be made pursuant to Sec. 17 of the act.

The procedure under Sec. 17 differs from that under Sec. 2 in but one respect: Sec. 17 requires the certificate of amendment to be signed by the *president* and *secretary*; Sec. 2, that the certificate shall be signed by the "president and a majority of the directors."

Under a like statute, it has been held, that when other amendments are joined with an increase of capital, the proceeding must be governed by the provisions of Sec. 2. *Continental Paint Co. v. Secretary of State*, 128 Mich. 621. The better practice, under such circumstances, is to comply with both sections—this being accomplished by having the secretary join with the president and directors in signing the certificate of amendment.

A duly adopted amendment, unrecorded, becomes an amendment *de facto*. The State alone can complain of the omission to record.—*Hoeft v. Kock*, 123 Mich. 171.

§156. Special Provisions "Creating, Defining, Limiting and Regulating Powers."

The clause permitting insertion in the articles of "any provision which the incorporators may deem advantageous.....and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders" etc., was borrowed from the General Corporation Act of New Jersey and received its first judicial interpretation December 7, 1904, in the case of *Audenried v. East Coast Milling Co.*, 68 N. J. Eq. 450, in an opinion by Vice Chancellor Bergen, who said: "Under this clause, it is insisted, the legislature has granted the right not only of creating, defining, limiting and regulating the powers of the corporation, but also the right to authorize the directors to exercise the powers thus established according to any method the incorporators may see fit to adopt, although the power to do this is not granted in express terms. I do not so interpret these words. The right 'to create' is limited to the establishing of, or regulating a power to be exercised by the corporation through its directors, which power shall not be inconsistent with the terms of the general act. The method of exercising the power created must conform to settled legal principles, unless it be otherwise distinctly authorized by the legislative act. No such express authority is conferred by this act, and it ought not to be inferred from ambiguous expressions. To hold that the legislature of our state, by the adoption of our general corporation act, intended to confer upon individuals an indefinite power of legislation, would require the adoption of a liberality of construction which the act does not warrant, and which, upon every known principle, is contrary to public policy."

Of this clause, the Michigan Department of State has said: "We do not think this provision can be construed as giving the company unlimited right to create and define its own powers. Many have construed the act in this way, and have sent in articles for record containing all the powers that might be granted to the company under the New Jersey statutes. As understood by this Department, the powers that may be created and defined must be, as shown in the provision at the end of the section, such as are not inconsistent with the act itself, or with the general statutes of the state; that is, the corporate powers of the corporation itself can only be such as are granted to it by the act."

The interpretation placed upon this clause by the Department of State practically holds, that all powers not granted to the corporation, expressly, or by necessary implication, are manifestly inconsistent with the act and are therefore excluded by its express terms. This view has the support of authority: *Walker v. Commissioner of Insurance*, 103 Mich. 344-346; *Chapman v. Colby*, 47 Mich. 51; *Town v. Bank of River Raisin*, 2 Doug. (Mich.) 548; *Orr v. Lacey*, 2 Doug. (Mich.) 253; *Bank of Michigan v. Niles*, 1 Doug. (Mich.) 403.

The affirmative effect of the clause is, that the manner of exercising powers expressly or impliedly granted by the act may be provided in the articles in consonance with legal principles.

So far as the powers of the corporation itself are concerned, the word "creating," as used in the clause under consideration, is clearly nugatory. The creation of corporate powers is an inherent right of the state, exercisable by the legislature only.—*Marshall's Corp.* 58. It cannot be delegated.—*Isle Royale Land Co. v. Osmun*, 76 Mich. 163.

The underlying objection to the creation of corporate powers by incorporators is the fact that legislative scrutiny would be thereby evaded and the dangers that lurk in special charters would be, in effect, revived. By this, the spirit, if not the letter, of the state constitution would be violated.—See *Beecher's Annotated Const.* 1908, Art. XII, Sec. 1.

The preceding considerations narrow the use of the special provision clause of the act to statements of special arrangements relating to the rights of stock, stockholders and directors. Among the subjects that may properly be covered by special provisions in the articles, the following may be mentioned:

(a) Provisions delegating to the board of directors exclusive or concurrent power to make and alter by-laws.—*Cahill v. Insurance Co.*, 2 Doug. (Mich.) 123-136.

(b) Provisions regulating the voting power and representation of the preferred stock.—Act. Secs. 2 and 35; *Marshall's Corp.*, p. 598.

(c) Limitations upon the power of the directors to mortgage the property or pledge the credit of the corporation.

(d) Any provision that might be legally enacted as by-laws. The purpose of inserting such provisions in the article is to give the arrangements permanency, and to make them a matter of public record—constructive notice to all persons.

§157. Consolidated Corporation Law—Section Relating to First Meeting.

Section 3. When any number of persons shall have associated according to the provisions of this act, any two of them may call the first meeting of the stockholders, at such time and place as they may appoint, by giving notice thereof by publishing the same in some newspaper published in the county in

which its office is located, and if there is no newspaper published in such county, then by publishing the said notice in some newspaper published in an adjoining county, at least two weeks before the time appointed for such meeting. But said notice may be waived by a writing signed by all the subscribers to the capital stock of said corporation, specifying the time and place for said first meeting, which writing shall be entered at full length upon the records of the corporation; and the first meeting of any such corporation, which has been held pursuant to such written waiver of notice, shall be valid.

§158. Notice of First Meeting.

The first meeting of the stockholders must be held pursuant to published notice, unless notice is "waived by a writing signed by all the subscribers to capital stock." The adoption of by-laws and the election of directors are acts of too much importance to be permitted without due notification to the parties in interest. In the absence of the statute permitting notice by publication, personal notice would have been necessary, in the absence of waiver.—*Tuttle v. Michigan Air Line R. Co.*, 35 Mich. 246-251.

The delay of two weeks incident to published notice, and also the expense of publication, are usually avoided by written waiver. To insure preservation of this instrument, it is ordinarily entered (not copied) directly upon the corporate record book, where the signatures are affixed. While the statute seems to contemplate that the waiver shall be a single instrument, there can be no doubt that the waiver might be made by the different stockholders in separate instruments. The statutory provision is merely directory. A meeting attended and participated in, without objection, by all of the stock subscribers, would undoubtedly be lawful, without either notice or written waiver of notice. Attendance and participation would amount to a waiver.

Where notice by publication has been duly given, actual notice is unnecessary. The statute being directory only, and there being no provision that failure to follow it shall invalidate the proceedings, reasonable personal notice would be sufficient. One who had neither actual nor constructive notice of the meeting, might, in a direct proceeding, call into question the legality of the election of officers chosen. But they would be at least *de facto* officers, and their right to act would not be open to collateral attack. *De facto* officers are upon the same footing as *de facto* corporations.—*Clement v. Everest*, 29 Mich. 19-23. The State alone can complain. *Parker v. Northern Central M. R. Co.*, 33 Mich. 23-24; *Eaton v. Walker*, 76 Mich. 579; *Detroit City Ry. v. Mills*, 85 Mich. 634-648; *Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282-288; *City of Kalamazoo v. Power Co.*, 124 Mich. 74-82.

§159. Consolidated Corporation Law—Section Relating to Directors.

Section 4. The stock, property, affairs and business of every manufacturing or mercantile corporation shall be managed by not less than three directors, who shall be chosen annually by the stockholders, at such time and place as shall be provided by the by-laws of said corporation, and who shall be stockholders, and shall hold their offices for one year, and until others shall be chosen in their stead.

§160. Board of Directors.

In the absence of legislative restriction, a corporation may deal with its property and business precisely as though the corporation were a natural person.—*Town v. Bank*, 2 Doug. (Mich.) 530; *Bank of Montreal v. Salt & Lumber Co.*, 90 Mich., 345-350.

This power of management is vested in the board of directors.—*Star Line v. Van Vliet*, 43 Mich., 364; *Genesee Savings Bank v. Barge Co.*, 52 Mich. 438; 3 *Thomp. Corp. Sec.* 3970; *Plaquemines Tropical Fruit Co. v. Buck*, 52 N. J. E. 219-238. The power of the stockholders is merely elective and legislative. Their ordinary remedy, if dissatisfied with the management, is to elect other directors at the annual meeting, or to alter the articles of association or the by-laws, or to sell their shares, or to sell out the company to another corporation formed for like purposes, or to bring about dissolution, or a receivership.

§161. Officers and Agents.

The board of directors may delegate its power to an officer.—*Preston National Bank v. Purifier Co.*, 84 Mich. 364-382. Or to an agent.—*Lockwood v. Boom Co.*, 42 Mich. 536; *Hartford Mining Co. v. Cambria Mining Co.*, 80 Mich. 491. Or to an executive committee.—*Cook Corp. Sec.* 715.

§162. Must Act as a Board.

To bind the corporation, the directors must act as a body. In the absence of delegated power, a director has no greater authority than any other stockholder to bind the company by his individual acts.—*Lockwood v. Boom Co.*, 42 Mich. 536-539; *Hartford Mining Co. v. Cambria Mining Co.*, 80 Mich. 491. The true and primary managing body consists of a board of directors *properly convened*.—*Cahill v. Insurance Co.*, 2 Doug. (Mich.) 123-136. Proper notice of the meeting is necessary to enable legal majority action.—*Covert v. Rogers*, 38 Mich. 363; *Doyle v. Mizner*, 42 Mich. 332. The meeting must be held on a lawful day; a business corporation cannot legally adopt resolutions on Sunday.—*Lansing Turnverein Society*

v. Carter, 71 Mich. 608. That directors must act as a board, see also Finley Shoe & Leather Co. v. Kurtz, 34 Mich. 89; Audenreid v. Milling Co., 68 N. J. Eq. 450.

§163. Powers of Board of Directors.

Under this act, the following may be mentioned as among the powers of the board of directors.

(a) Power to purchase property, both real and personal, for corporate purposes.—Act, Sec. 14.

(b) Power to call in subscriptions.—Act, Sec. 11.

(c) Power to make all lawful contracts relating to the corporate business.—Cook's Corp. Sec. 712; Marshall's Corp., p. 936.

(d) Power to sell corporate property in regular course of business, or as necessity may require.—McElroy v. Minnesota Percheron Horse Co., 96 Wis. 317; Knight v. Mich. Female Seminary, 152 Mich. 616-618.

(e) Power to make an assignment for the benefit of corporate creditors.—Covert v. Rogers, 38 Mich. 363; Boynton v. Roe, 114 Mich. 401-407.

(f) Power to borrow money for corporate purposes and to issue evidences of indebtedness, such as notes or bonds, and to secure the same by pledge or mortgage of the corporate property.—Detroit v. Mutual Gas Light Co., 43 Mich. 594; Joy v. Plank Road, 11 Mich. 155-164; Bank v. Lumber Co., 122 Mich. 573; Crossette v. Jordan, 132 Mich. 78-80.

(g) Power to sue, compromise, arbitrate and settle claims for or against the corporation.—Whitaker v. Grummond, 68 Mich. 249-257; Marshall Corp., p. 937; Thomp. Corp., Sec. 7754; Cook Corp., Sec. 750.

Directors may apply the assets of a corporation to payment of their unsecured claims against it, although other creditors remain unpaid.—Nappanee Canning Co. v. Reid, Murdock & Co., 59 L. R. A. 199.

(h) Power to pass or to declare dividends upon any and all classes of stock.—Lockhart v. Van Alstyne, 31 Mich. 75-82; Marshall Corp. p. 938; Hunter v. Roberts, 83 Mich. 63; Crane v. Bayley, 126 Mich. 323-326.

(i) Power to appoint other officers and agents and to fix the salaries thereof.—Act, Sec. 6.

The right to fix salaries is terminated by the appointment of a receiver.—Lenoir v. Linville, 51 L. R. A. 146.

(j) Power to fill vacancies on the board.—Act, Sec. 7.

§164. Number of Directors.

The act provides that the number of directors of "every manufacturing or mercantile" company shall not be less than three. No maximum limit is provided for these companies, and neither a maximum nor a minimum number of directors is specified for corporations other than manufacturing and mercantile. Since a president and vice-president must be chosen by the directors "of their number," it is evident that the board cannot be composed of fewer than two members in any case. The minimum number

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is, in practice, not less than three. No matter how large the board, its number should always be uneven, so that tie voting may be avoided.

§165. Stock Qualifications.

Directors must continue to hold stock during the term of their office. A director who sells and transfers all of his stock, or who, in any other manner ceases to be a stockholder, *ipso facto* ceases to be a director.—Cook's Corp., Sec. 623.

One to whom stock has been transferred for the sole purpose of qualifying him to act as a director, may be lawfully elected to that office, unless the transfer was in furtherance of some fraudulent purpose.—Faulkner v. Edwards, 12 L. R. A. 781.

§166. Powers of Directors Holding Over.

Directors holding over after the expiration of the term for which they were elected, for want of successors, have the same powers that they enjoyed during their regular term.—Preston National Bank v. Purifier Co., 84 Mich. 364-378; Kimball v. Goodburn, 32 Mich. 10.

§167. Consolidated Corporation Law—Section Relating to Special Meeting for Election.

Section 5. If an election of directors in any such corporation shall not take place at the annual meeting thereof, in any year, such corporation shall not thereby be dissolved, but an election may be had at any time thereafter to be fixed upon, and notice thereof to be given by the directors: Provided, that in case the directors shall refuse or neglect so to do, any three of the stockholders may call a meeting of the stockholders for the election of directors, by giving notice as prescribed by section three of this act.

§168. Special Meeting for Election of Officers.

If the duty to call the annual meeting is definitely enjoined upon the directors by the articles of association or by-laws, mandamus will lie to compel them, if they refuse. In case the refusal is in furtherance of fraudulent design, equity has power to require the call to be made.—Marshall's Corp. p. 897.

§169. Consolidated Corporation Law—Section Relating to Officers.

Section 6. The board of directors shall elect one of their number to be president of the corporation and board, and one or more of their number to be vice-president, and shall also

choose a secretary and treasurer, and assistants if deemed necessary. The secretary and treasurer shall reside and transact the corporation's business at its office within this state, unless the articles, or an amendment thereof duly made, provide for the location of the principal office of the corporation without this state. The directors shall appoint such other officers and agents as the by-laws of the corporation shall prescribe, who shall hold their offices according to their contracts, or until others are appointed in their stead. If the stockholders so direct, the same person may hold the office of secretary and treasurer.

§170. Residence of Officers.

The secretary and treasurer are the only officers required to reside in this State, and this only in cases where the corporation's principal office is in Michigan. Violation of the provision by removal from the State, would not *ipso facto* vacate the office. The tenure would continue until determined through a proceeding brought by the State, or by some non-assenting stockholder.

§171. Executive Committee.

Under the provision of the act authorizing appointment of "other officers and agents as the by-laws of the corporation shall prescribe," the board of directors may appoint an executive committee from its own membership (Cook's Corp., 715, note 1) and a majority of such executive committee, properly convened, will possess power to bind the corporation by its acts.—McNeil v. Chamber of Commerce, 13 L. R. A. 559.

§172. Removal of Appointees.

In the absence of time contracts, appointed officers may be removed at the pleasure of the board.—Marshall's Corp., 924.

An agreement by directors to reimburse an employee out of their private funds in case of his discharge before the termination of his contract is against public policy and void, unless assented to by all the stockholders. Such contracts would have a tendency to influence directors to retain incompetent employees, to the injury of the company.—Wulbur v. Stoepel, 82 Mich. 244.

§173. United Offices.

It is competent for one and the same person to act as president, treasurer and general superintendent of a corporation, in the absence of any express restriction to the contrary.—Preston National Bank v. Purifier Co., 84 Mich. 364-377.

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§174. Consolidated Corporation Law.—Section Relating to Vacancies.

Section 7. The directors of such corporation shall have power to fill any vacancy which may happen on their board, by death, resignation or otherwise, for the current year.

§175. Vacancies.

If the number of directors is increased by amendment of the by-laws, the newly created directorships are not vacancies within the meaning of the act.—*Dill's Corp.*, p. 32, citing *State v. Messmore*, 14 Wis. 177. Such directorships should be filled by election.

If the vacancies reduce the board below a quorum, the remaining members, being less than a quorum, cannot fill the vacancies.—*Cook's Corp.*, Sec. 713, citing *State v. Curtis*, 9 Nev. 325.

§176. Consolidated Corporation Law.—Section Relating to Place of Business.

Section 8. It shall be lawful for any corporation organized or existing under the provisions of this act to conduct its business, in whole or in part, at any place or places within the United States, or any foreign country.

§177. Business Anywhere in the United States or Any Foreign Country.

By preponderance of authority, in the absence of charter restrictions, a corporation may carry on its business wholly outside the state where it was organized. It preserves its corporate character in the foreign jurisdiction, but it cannot exercise there powers denied it by its home sovereignty.—*People v. Howard*, 50 Mich. 239; *Home Ins. Co. v. Davis*, 29 Mich. 238; *Thompson v. Waters*, 25 Mich. 214; *Marshall Corp.*, p. 1178.

§178. Consolidated Corporation Law.—Section Relating to Recording.

Section 9. Before any corporation, organized under this act to operate in this state, shall commence business, the president shall cause the articles of association to be recorded, at the expense of said corporation, in the office of the Secretary of State of this state, and in the office of the County Clerk of the county in which such operations are to be carried on, and before any corporation organized hereunder, to operate outside this state shall commence business, the president shall cause the articles of association to be recorded at the expense of the cor-

poration, in the office of the Secretary of State and in the office of the County Clerk of the county in this state where the office of the corporation is located. The Secretary of State and the County Clerk, in whose office such articles of association shall be recorded, shall each certify upon every such articles of association recorded by him, the time when it was received, with a reference to the book and page where the same is recorded, and the record, or transcript of the record, certified by the Secretary of State of this state, and under the seal thereof, shall be received in all the courts of this state as prima facie evidence of the due formation, existence and capacity of such corporation in any suit or proceedings brought by or against the same. And in case of companies organized under act number forty-one, laws of eighteen hundred and fifty-three, and amendments thereto, and whose original articles of association and amendments are filed in the office of the Secretary of State, copies of such articles of association or amendments, duly authenticated by the Secretary of State under the seal of the state, shall be received in all courts of this state as prima facie evidence of the things therein stated.

§179. Commence Business.

The expression "commence business" refers to such general business as the corporation is especially authorized to transact.—*Detroit Transp. Co. v. Assessors*, 91 Mich. 382. Clearly it does not refer to the purchase of property taken in payment of subscriptions, since description of this and a statement of the valuation at which it is accepted must be set forth in the articles themselves.—Act, Sec. 2.

By C. L. 1897, Sec. 8574, it is provided that, "*All contracts made in this State.....by any corporation which has not first complied with the provisions of this act (i. e. that has not paid the statutory franchise fee) shall be wholly void.*"—*Rough v. Breitung*, 117 Mich. 48-53..

§180. Fees.

The franchise fee is 50c per \$1,000; minimum fee \$5. The recording fee is 20c per folio.

The recording fee to be sent the County Clerk is in all cases the same as the recording fee payable to the Secretary of State.

§181. Refusal to Record.

The Secretary of State has no arbitrary power to refuse to record articles of association, and if he does so wrongfully, mandamus will lie to compel him.—*Isle Royale, etc., v. Osmun*, 76 Mich. 163. But if the

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articles do not conform to the requirements of law, the Secretary of State is justified in refusing to receive them for record.—Id. See also *Jenking v. Osmun*, 79 Mich. 305.

§182. Place of Record.

The place of operation is the place where the corporation's productive work is carried on, as distinguished from its business office, which may be in a different county.

When the corporation's operations are to be wholly within this State, the articles are to be recorded in the county or counties where such operations are to be conducted.

When the operations are to be wholly outside this State, the articles are to be recorded in the county in this State where the corporation's office is located.

Removal of the office to another county requires the recording of the articles, together with a certificate of removal, in such county. The certificate of removal must be recorded also with the County Clerk of the county from which removal is had, and also with the Secretary of State.—Act. Sec. 18. As bearing upon the subject of recording, see *Van Etten v. Eaton*, 19 Mich., 186-190.

§183. Failure to Record Articles.

When articles of association have been executed in good faith, but not recorded, a corporation *de facto* results.—*People v. Carter*, 122 Mich. 608. One who contracts with a corporation *de facto* in its corporate name cannot defeat his obligation by proving the organization's failure to record its articles.—*Bank v. Stone*, 38 Mich. 779-782; *Estey Mfg. Co. v. Runnels*, 55 Mich. 130; *Stofflet v. Strome*, 101 Mich. 197-199. But see *Nichols v. Buell et al.*, 16 D. L. N. 463 (July, 1909). Nor can a creditor who has dealt with a corporation *de facto* in its corporate name, attack its corporate existence and hold its stockholders liable as partners.—*Swartwout v. Railway Co.*, 24 Mich. 389; *American Mirror Co. v. Bulkley*, 107 Mich. 477; *Gow v. Collin*, 109 Mich. 45-51.

§184. Evidence of Incorporation.

The statute contemplates proof of incorporation by certified copy, or by introduction of the original record. This is by no means the only manner in which proof of corporate existence may be made. Evidence that the corporation "is doing business under a certain name" is *prima facie* proof of due incorporation and of lawful corporate existence.—See C. L. 1897, Sec. 10194. Such proof is sufficient to rebut the plea of *nul teil* corporation.—*Canal Street Gravel Road Co. v. Paas*, 95 Mich. 376; *Wilson Sewing Machine Co. v. Spears*, 50 Mich. 534-537; *Garton v. Union City National Bank*, 34 Mich. 279; *Lake Superior Building Co. v. Thompson*, 32 Mich. 293.

§185. Consolidated Corporation Law.—Section Relating to Quorums.

Section 10. A majority of the directors of every manufacturing or mercantile corporation convened according to the by-laws, shall constitute a quorum for the transaction of business; and the stockholders holding a majority of the stock, at any meeting of the stockholders, shall be capable of transacting the business of that meeting, except as herein otherwise provided; and at all meetings of such stockholders each share shall be entitled to one vote. Stockholders may appear and vote in person or by proxy duly filed.

§186. Quorum.

A majority of the quorum, in the absence of statutory, charter or by-law provisions to the contrary, has power to bind the corporation by its vote.—*Ten Eyck v. Railroad*, 74 Mich. 226-235; *Cahill v. Kalamazoo Ins. Co.*, 2 Doug. (Mich.) 123-136.

§187. Majority Insufficient.

"Except as herein otherwise provided" refers to the following transactions, which require more than a majority vote for their accomplishment:

- (a) Increasing or diminishing the capital stock.—Act Sec. 2, Ante Sec. 138.
- (b) Changing the corporation's place of business.—Act Sec. 18, Post Sec. 220.
- (c) Amending the articles of association.—Act Sec. 17, Post Sec. 214.
- (d) Creating a class of preferred stock.—Act Sec. 35; Post Sec. 267.

Items "a," "b" and "c" require a two-thirds affirmative vote of *all stock outstanding*. Item "d" requires a three-fourths affirmative vote of *all stock outstanding*.

§188. Right to Vote.

One holding a certificate of stock properly endorsed to him has a right to vote at meetings of the stockholders, although the transfer may not have been registered upon the books of the company.—*McLean v. Medicine Co.*, 96 Mich. 497-481. Production of the endorsed certificate is sufficient evidence of this right.—*Id.*; see also *Noller v. Wright*, 138 Mich. 416; Endorsements in blank are regular.—*Walker v. Detroit Transit Co.*, 47 Mich. 338-360.

§189. Cumulative Voting.

At elections for choosing directors, cumulative voting is authorized.—*Attorney General v. Looker*, 111 Mich. 498; Act 141 of 1907, p. 179.

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§190. Proxies.

No particular form need be observed in the preparation of a proxy. It will be sufficient if it appears on its face to confer the requisite authority, provided it is free from reasonable grounds of suspicion as to genuineness. It cannot be rejected, even though it does not conform to technical requirements of the by-laws.—*People's Home Savings Bank v. Superior Court*, 29 L. R. A. 844 and notes. One present by proxy is bound by corporate acts to the same extent as though he were present in person.—*Stradley v. Cargill Elevator Co.*, 135 Mich. 367.

§191. Consolidated Corporation Law.—Section Relating to Collecting Subscriptions.

Section 11. The directors may call in subscription to the capital stock of such corporation by installments. In such proportion and at such times and places as they shall think proper, by giving notice thereof, as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment for the space of thirty days after the same shall have become due and payable, and after he shall have been notified thereof, said corporation may recover the amount of said installment from such negligent stockholder in any proper action for that purpose, or so much of the stock of such delinquent stockholder, as may be necessary to pay such installment so due, may be sold by the directors at public auction at the office of the secretary of the corporation, giving at least thirty days' notice of such sale in some newspaper published in the county where said office is located, if there is a newspaper published in such county; if not, then in some newspaper published in some adjoining county; and in case of a sale of said stock the proceeds thereof shall be first applied in payment of the installment called for and the expenses of the sale, and the residue, if any, shall be refunded to the delinquent stockholder. In case the proceeds of such sale shall be insufficient to pay said installment, said corporation may recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares purchased.

§192. Remedies for Non-Payment.

The remedies by sale of the stock and by assumpsit to collect the whole subscription, or to collect any deficiency remaining after sale of the stock, are cumulative.—*Atlantic Dynamite Co. v. Andrews*, 97 Mich. 466. See also

Dexter & Mason P. R. Co. v. Millerd, 3 Mich. 91; Carson v. Mining Co., 5 Mich. 288; Merrimac Mining Co. v. Bagley, 14 Mich. 501.

Certificates marked "fully paid" should not be issued until after full payment has been made. Stock issued as fully paid cannot be subjected to assessments in the hands of *bona fide* transferees.—Young v. Erie Iron Co., 65 Mich. 111.

§193. Consolidated Corporation Law.—Section Relating to Reports and Notices of Changed Status.

Section 12. Every corporation subject to this act, including every foreign corporation admitted to carry on business in this state under the provisions of this act, shall annually, in the month of January or February, make duplicate reports showing the condition of such corporation on the thirty-first day of December next preceding, on suitable blanks to be furnished by the Secretary of State, as hereinafter provided: Provided, Flour milling corporations shall make and deposit annual reports in the month of July for the year ending June thirtieth, preceding: Provided Further, That any such corporation, which shall make and file with the Secretary of State a statement in writing certified to by its president and secretary, showing that its fiscal year ends at a time other than December thirty-first and that it is its custom to take an inventory and balance its accounts at the close of such fiscal year, and cannot make an accurate report for any other date, shall make its report showing its condition at the close of its fiscal year, such report to be filed within sixty days after such close of its fiscal year.

Such reports shall state the amount each of common and preferred capital stock authorized, and the amount thereof subscribed for, and the amount thereof actually paid in in cash, and the amount thereof paid in property; the total value as near as may be estimated, of all property owned by the corporation; the value of different items or classes of property as follows: Real estate used in its business; real estate not used in its business; goods, chattels, merchandise, material and other tangible property; patent rights, copyrights, trademarks and formulas; good will; and all other property, specifying the kind; value of all credits owing to the corporation; the amount of debts of the corporation; the name and postoffice address of each stockholder and the number of shares of preferred and common stock held by him at the date of such report; the name and post office address of each officer and director of the corporation, and such other information as the Secretary of State may require.

It shall be the duty of the Secretary of State in the month of December, in each year, or in case of corporations whose fiscal year ends prior to December thirty-first, on application of such corporation to mail to each corporation which is subject to the provisions of this act, suitable blanks on which shall be printed a copy of this section. Such reports shall be signed by a majority of the board of directors and verified by the oath of the secretary of the corporation, and deposited in the office of the Secretary of State within the said month of January or February, or within sixty days after the close of such fiscal year, accompanied by a filing fee of fifty cents. The Secretary of State shall carefully examine such reports, and if upon such examination they shall be found to comply with all the requirements of this section, he shall then file one of them in his office, and shall forward the other by mail or express to the county clerk of the county in which the office in this state, for the transaction of the business of said corporation, is situated. And it shall be the duty of such county clerk, upon receipt of such report, to immediately cause the same to be filed in his office.

If any corporation neglect or refuse to make and file the reports required by this section within the time herein specified, and shall continue in default for ten days thereafter, its corporate powers shall be suspended thereafter until it shall file such report, and it shall not maintain an action in any court in this state upon any contract entered into during the time of such default; and any director of such corporation so in default, who has neglected or refused to join in the making of such report, shall be liable for all the debts of such corporation contracted since the filing of the last report of such corporation, and shall also be liable to such corporation for any damage sustained by it by reason of such refusal or neglect.

And in case a corporation organized or doing business under the provisions of this act shall be dissolved by process of law, or whose term of existence shall terminate by limitation, or whose property and franchises shall be sold at mortgage sale, or at private sale, or if for any reason the attitude of the corporation toward the state shall be changed from that set forth in the articles of association, it shall be the duty of the last board of directors of such corporation within thirty days thereafter to give written notice of such change to the Secretary of State, signed by a majority of such directors and accompanied by a recording fee of fifty cents, which said notice shall be recorded

as amendments are required to be recorded. And in case of neglect to give such notice, they shall each be subject to a penalty of five dollars for each and every day during the continuance of such neglect or refusal.

The neglect or refusal to file the report, or to record the notice required by this section to be filed or recorded, shall be deemed wilful when such report or notice is not filed or recorded within the time herein limited.

Whenever any corporation has neglected or refused to make and file its report within twenty days after the time limited in this section, the Secretary of State shall cause notice of that fact to be given by mail to such corporation, directed to its post office address. The certificate of the Secretary of State or his deputy, of the mailing of such notice, shall be *prima facie* evidence in all courts and places of that fact, and that such notices were duly received by said corporation.

§194. Annual Report.

"No doubt an important reason—perhaps the principal reason—for the statutory provision is to enable persons who have occasion to deal with corporations to ascertain their condition and their title to credit."—*Bank of Saginaw v. Pierson*, 112 Mich. 410-414. See also *Van Etten v. Eaton*, 19 Mich. 186-191. False reports are a fraud upon such creditors as rely upon them, or upon statements of commercial agencies based upon such reports.—*Emerson v. Steel & Spring Co.*, 100 Mich. 127; *Silberman v. Munroe*, 104 Mich. 352.

The making of a simple, truthful statement would seem, upon its face, to be a task unattended by serious difficulties. It may be so if the proper policy of conservative valuation is adhered to from the beginning. But to harmonize overvaluations in the articles of association, undervaluations in the tax statement, and book values differing from each of these, in an annual statement which is at once a guide for creditors, competitors, dissatisfied stockholders and tax assessors, is not without perplexities. No rule for untangling the knotted skein of inconsistencies sometimes found in corporate books, statements, instruments and reports is ventured. Each case presents independent problems. Difficulties of the kind suggested are best handled by prevention. Clients should be forewarned of the whole breed of troubles with which overvaluations and loose statements are beset. Where shadowy assets and inflated inventories have been carried upon the corporate books, a change of policy is to be recommended.

As a matter of practice, it is suggested that the corporation, or its counsel, should retain a copy of each annual report for purposes of reference and comparison.

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§195. Suspension of Corporate Powers.

The act provides that ten days default in filing the annual report shall work a suspension of the corporate powers. The result of the suspension is this, that suit commenced *during default* (i. e. while the powers are suspended), upon a contract *made during default*, may be defeated by the defense that the suit is prematurely brought.—Thomp. Corp. Sec. 7956. The suspension apparently has no other effect. To assert that contracts made during default are permanently unenforceable, and that third parties may thus be relieved of all liability upon honest obligations to the corporation, is to assume an intent which the Legislature has not expressed, and which, under the rules of construction applicable to penal statutes of this character, the courts will certainly decline to read into the act.

§196. Liability of Directors for Default in Filing Annual Statement.

The liability of directors who have "neglected or refused" to join in making the annual report is two-fold:

(a) They are liable for all debts contracted since the last report was filed;

(b) They are liable to the corporation for any damages sustained by it by reason of their refusal or neglect.

These provisions, being penal, must be strictly construed.—*People v. Crucible Steel Co.*, 151 Mich. 618-620; *Gennert v. Ives*, 103 Mich. 547; *Bank of Saginaw v. Pierson*, 112 Mich. 410-413; *Breitung v. Lindauer*, 37 Mich. 217. The directors are exonerated where they have *made* the report, even though, through some unintentional neglect, or miscarriage, it has not been filed. The penalty for failure to *file* falls upon the corporation.—*Ford River Lumber Co. v. Perron*, 148 Mich. 399.

Assumpsit may be brought by any creditor against any one of the directors. *Bank of Saginaw v. Pierson*, 112 Mich. 410. Or all may be sued jointly.—*Wilcox Cordage Co. v. Mosher*, 114 Mich. 64-66. A director who is thus forced to pay corporate debts is entitled to contribution.—Thomp. Corp. Sec. 4376.

When the individual liability has once attached, it is not divested by subsequent compliance with the law. Joining in a belated report merely suspends the incurrment of further liability.

It is clearly immaterial that the debt sued upon was contracted prior to the election of the director sued, provided the default has continued. His failure to comply with the law after his election, finds no justification in the fact that his predecessor has also failed.

§197. False Report.

A false report is, nevertheless, a report, hence proof that the report filed was false will not sustain an action under this statute.—*Bonnell v. Griswold*, 80 N. Y. 128.

A false statement filed with the Secretary of State, and used as a basis of credit by reporting agencies, whose reports are relied upon by creditors in extending credit, perpetrates a fraud which will warrant the creditor, thus misled, in proceeding by attachment.—*Emerson v. Steel & Spring Co.*, 100 Mich. 127-132. And where goods have been bought upon the strength of false reports, it is evidence from which a jury may infer a preconceived fraudulent intent on the part of the vendee not to pay, in support of an action of replevin or trover founded upon the purchase.—*Silverman v. Munroe*, 104 Mich. 352-355.

§198. Notice of Change of Status.

The act contemplates that notice shall be filed with the Secretary of State within thirty days after.

- (a) Dissolution, at law or in chancery;
- (b) Termination by limitation, where existence is not renewed;
- (c) *De facto* dissolution by sale of property and franchises;
- (d) *De facto* dissolution by formal election to abandon the corporate purposes and go into liquidation;
- (e) General assignment for the benefit of creditors;
- (f) Sale of all corporate assets by judicial process;
- (g) Adjudication as a bankrupt.

The meaning of the statute may be summarized by saying, that the notice is to be given upon the occurrence of any event amounting to a dissolution *de jure* or *de facto*. When such an event has occurred, and the notice required has been duly made and recorded, *further annual reports are not demanded or necessary*.—*Gold v. Slyne*, 134 N. Y. 262, 17 L. R. A. 767, and cases there cited.

The notice of change of status is to be recorded "as amendments are required to be recorded," i. e. with both the Secretary of State and the County Clerk of the county where the corporation's principal office is located.—Act, Sec. 2, 9 and 17.

§199. Penalty for Default in Giving Notice of Change of Status.

The State may proceed to collect \$5 per day from each director, for each day embraced in the period of default. The liability is several, and there can be no right of contribution.—*Cook's Corp.* Sec. 749; *Thomp. Corp.* Sec. 4095.

§200. Neglect to File Report or Record Notice Deemed Wilful.

It will be noticed that the statute does not create the presumption of wilfulness in cases where the directors neglect or refuse to join in *making* the annual report. The presumption arises independent of the statute.—*Van Etten v. Eaton*, 19 Mich. 187. And may be rebutted.—*Gennert v. Ives*, 102 Mich. 547-551.

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While the present statute in no instance expressly makes wilfulness a necessary ingredient of the penalized act or neglect, the clause providing that "neglect or refusal to file the report or record the notice required shall be deemed wilful" strongly indicates that, as to these acts, such was the legislative intent. If this be conceded, it follows that rebuttal of the presumption will amount to a complete defense. That this should be true is certainly consistent with justice.

A *penal statute* is defined to be, "One which enforces a forfeiture or penalty for transgressing its provisions, or doing a thing prohibited." In approving this definition, Justice Montgomery, in *People v. Crucible Steel Co.*, 151 Mich. 618, said: "The term 'penal statute' is oftentimes given a broader meaning, and is used in defining a statute which affords a remedy to a private party, in the nature of penalty." Where the State fails in a suit to enforce a penalty under a penal statute, costs cannot be taxed against the People.—C. L. 1897, Sec. 11277; *People v. Crucible Steel Co.* (Id.)

§201. Notice of Default.

The notice required by the Act to be given by the Secretary of State applies to annual reports only, and is designated as a measure of fairness, to the end that duplicate reports may be furnished in case those sent have not been received, as happened in *Ford River Lumber Co. v. Perron* (ante). Failure to give the notice would present no obstacle to enforcement of penalties, through continued default after knowledge of receipt of such notice would certainly tend to support the presumption that the neglect was wilful.

§202. Consolidated Corporation Law.—Section Relating to General Powers.

Section 13: Every corporation organized or existing under this act shall have power to have succession by its corporate name for the period limited in its charter, or by this act; to sue and be sued in any court of law or equity with the same rights and obligations as a natural person, to make and use a common seal and alter the same at pleasure, to ordain and establish by-laws for the government and regulation of its affairs, and to alter and repeal the same, to elect all necessary officers and to appoint and employ such agents as the business may require.

§203. General Powers.

The powers expressed in Sec. 13 of the Act would be clearly implied had they not been expressly stated. It is doubtful that this section adds anything to the effect of the statute.

§204. By-Laws.

The Act contemplates that there shall be by-laws framed upon the following subjects:

- (a) Time, place and manner of electing directors.—Act, Sec. 4.
- (b) Appointive officers and agents.—Act, Sec. 6.
- (c) Method of convening directors' meeting.—Act, Sec. 10.
- (d) Notice of calls on subscriptions.—Act, Sec. 11.
- (e) Notice of intended foreclosure of stock lien.—Act, Sec. 24.
- (f) Mode of transfer of shares.—Act, Sec. 16.
- (g) Time of redemption of preferred stock.—Act, Sec. 35.

By-laws may also properly provide:

- (a) For joinder of office of Secretary and Treasurer.—Act, Sec. 6.
- (b) For assistant secretary and assistant treasurer.—Act, Sec. 6.
- (c) For method of filing proxies.—Act, Sec. 10.
- (d) That the board shall consist of a certain number.—Act, Sec. 4.
- (e) That the fiscal year shall end on a certain date.—Act, Sec. 12.
- (f) That, to be qualified to become directors, stockholders must possess in their own respective names and right a certain number of shares.—Marshall's Corp. p. 918.

(g) That dividends, when earned, shall be payable quarterly, semi-annually or annually.

(h) That certain officers shall have power to execute corporate checks, notes, contracts and conveyances.—See Cook's Corp., Sec. 719.

(While these powers are ordinarily delegated to the president and secretary, or to the president and treasurer, they may be delegated to a general manager, or to some other corporate agent).

(i) That the duties of absent officers may be temporarily delegated to other officers.—Marshall's Corp., p. 991.

(j) That the secretary and treasurer shall be stockholders. (Otherwise they need not be stockholders).

(k) That the secretary and treasurer shall be directors. (Otherwise they need not be directors).

(l) That the transfer book shall be closed a certain number of days before the annual election.—Marshall's Corp., p. 801.

(m) That the corporate seal shall embody certain words.—No specific form is legally necessary.—Cook's Corp., Sec. 722.

(n) That notices of all kinds may be served by mail.—Stradley v. Cargill Elevator Co., 135 Mich. 367-375.

§205. Consolidated Corporation Law.—Section Relating to Real Estate.

Section 14. Every such corporation shall have power to purchase, hold and convey all such real estate and personal estate as the purposes of the corporation shall require, and all other real and personal estate which shall have been bona fide con-

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veyed or mortgaged to said corporation by way of security, or in satisfaction of debts. Any corporation formed under this act may purchase real or personal property necessary for its business, and issue its authorized capital stock to the amount of the value thereof in payment therefor, and the capital stock so issued shall be full paid stock, and not liable to any further call, neither shall the holder thereof be liable to any further payment under any of the provisions of this act, except the liability imposed by section twenty-nine; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property shall be conclusive. And in addition to the powers hereinbefore enumerated, every corporation organized under this act shall possess and exercise all such rights and powers as are necessarily incidental to the exercise of the powers expressly granted herein. It may also purchase and hold any grant of land made by the government to aid in any work of internal improvement.

§206. Power to Hold Property.

The power to hold property, both real and personal, is incident to every corporation, unless there is an express prohibition, or such power is repugnant to the purpose for which the corporation was created.—*Regents v. Detroit*, 12 Mich. 138-160; *Thompson v. Waters*, 25 Mich. 214.

§207. Stock Issued for Property.

The only important provision of Sec. 14 of the Act is that which relates to the issue of full-paid stock for property. The issue is to be "the amount of the value thereof," and "the capital stock *so issued* shall be full paid stock," and "in the absence of actual fraud in the transaction the *judgment* of the directors as to the value of the property shall be conclusive."

The "trust fund doctrine" prevails in this state.—*Clark v. E. C. Clark Machine Co.*, 151 Mich. 416-424. Where this doctrine is in force, the rule that payment in "money or in money's worth" applies.—*Moore v. Universal Elevator Co.*, 122 Mich. 48-54. But this rule may undoubtedly be relaxed by statute.—*Moore v. Universal Elevator Co. (Id.)* Here it *has been* relaxed. But there are still at least three contingencies to be reckoned with:

(a) There must be no actual fraud,—i. e. fraud other than constructive fraud, or what is known as "fraud in law."

(b) The judgment of the directors *must have been exercised*. A mere arbitrary or reckless valuation is not within the protection of the act.

(c) An *adequate* "itemized description of the property" must be included in the articles. Sections 2 and 14 of the act are to be construed together.

Should any one of these elements be wanting, it is fair to conclude,

upon authority of *Wood v. Sloman*, 150 Mich. 177, and the cases there cited, that original subscribers, and such transferees as are not *bona fide* holders, might be held for assessments for the benefit of creditors, in case of actual fraud or gross overvaluation.

§208. Consolidated Corporation Law.—Section Relating to Corporate Books.

Section 15. The books of every such corporation containing their accounts shall be kept, and shall at all reasonable times be open in the city, village, or town where such corporation is located, or at the office of the treasurer of such corporation, within this state, for inspection by any of the stockholders of said corporation, and said stockholders shall have access to the books and statements of said corporation, and shall have the right to examine the same in said city, village or town, or at said office; and as often as once in each year a true statement of the accounts of said corporation shall be made and exhibited to the stockholders.

§209. Right of Stockholders to Inspect Books.

Under this provision, the right of inspection is absolute and the purpose is immaterial.—*Thomp. Corp.*, Sec. 4412; *Cook's Corp.*, Sec. 514; *Weihe-mayer v. Bitner*, 45 L. R. A. 446-448; *Cincinnati Volksblatt Co. v. Hoffmeister*, 48 L. R. A. 732. But this absolute right extends only to books of account and such statements as to the statute requires to be made "as often as once each year." As to all other corporate records, the common law rule prevails. At common law, the right of inspection does not exist for the purpose of enabling a stockholder to gratify idle curiosity. He must have some interest at stake that makes inspection necessary.—*People v. Walker*, 9 Mich. 328-330. If he has such an interest, his motive is immaterial. The inspection must be permitted, even though its purpose be to obtain data upon which to found a suit against the company by reason of an existing dispute.—*Woodworth v. Old Second National Bank*, 154 Mich. 459-467.

§210. Consolidated Corporation Law.—Section Relating to Transfers.

Section 16. The stock of every such corporation shall be deemed personal property, and be transferred only on the books of such corporation, in such form and manner as their by-laws shall prescribe, and such corporation shall at all times have a lien upon all the stock or property of its members invested therein, for all debts due from them to such corporation.

§211. Transfers.

Transfers on the books of the company are not essential to the validity of the transferee's title.—*Mandelbaum v. Mining Co.*, 4 Mich. 464. Delivery of a certificate endorsed in blank is sufficient.—*Walker v. Detroit Transit R. Co.*, 47 Mich., 338-350; *Noller v. Wright*, 138 Mich. 416; *May v. McQuillan*, 129 Mich. 392-396; *Judson v. Stonington Mining Co.*, 128 Mich. 103. An unrecorded transfer is good, even as against levies made by creditors of the transferor.—*Newberry v. Detroit & L. S. Iron Co.*, 17 Mich., 141; *May v. Cleland*, 117 Mich. 45-47.

The provision making stock "transferable only on the books of the company," operates merely as a protection to the corporation.—*Matthews v. Hoagland*, 48 N. J. Eq., 455-486. For example, the transferee of shares, under an unregistered transfer, could not recover from the corporation a dividend by it paid to his transferor, who appeared from the books of the company to be the holder of the shares at the time the dividend was paid.—*Marshall's Corp.*, p. 741. So also an unrecorded transfer of which the corporation has no notice does not prevent a lien in favor of the corporation attaching to the shares in the hands of the transferee for subsequent indebtedness of the transferor to the company.—*Michigan Trust Co. v. State Bank*, 111 Mich. 306; *Citizen's State Bank v. Kalamazoo Bank*, 111 Mich., 313; *Oakland Co. Savings Bank v. State Bank*, 113 Mich. 284.

§212. Statutory Lien.

A *statutory* lien is notice to all the world. Strictly speaking, there can be no *bona fide* purchaser of shares subject to such a right of lien, for all persons are charged with knowledge that the corporation may have a claim. Good faith purchasers, who give value, take, nevertheless, subject to such rights in the shares as the corporation may have gained.—*Newberry v. Detroit, etc.*, 117 Mich. 141; *Citizens State Bank v. Kalamazoo Bank*, 111 Mich. 313; *Michigan Trust Co. v. State Bank*, 111 Mich. 306.

But the corporation may waive its lien by permitting a transfer.—*Just v. State Savings Bank*, 132 Mich. 600. Or by falsely denying that it has such a claim.—*Oakland County Savings Bank v. State Bank*, 113 Mich. 284-287. Or, where the lien is for an unpaid subscription, by issuing its certificates marked "fully paid and non-assessable."—*Young v. Erie Iron Co.*, 65 Mich. 111.

§213. Lien for "Debts Due."

A debt is defined by Judge Cooley to be, "That which one person is bound to pay another, either presently or at some future period; *something which may be the subject of suit as a debt.*" *Lockhart v. Van Alstyne*, 31 Mich. 76-78; *Estate of Lambie*, 94 Mich. 489-492. The word "due" has two well established meanings. It is sometimes held to mean "immediately payable."—*Northwestern Mut. Life Ins. Co. v. Greiner*, 115 Mich. 641; *Cross v. McMaken*, 17 Mich. 511-515. Again it is held to mean "owing" or

"remaining unpaid."—*Fowler v. Hoffman*, 31 Mich. 214-219. It has been applied in the latter sense in construing C. L. 1897, Sec. 10714 of the Mechanic's Lien Law.—*Smalley v. Ashland Brown Stone Co.*, 114 Mich. 104-106. Also in construing C. L. 1897, Sec. 7326, relating to the time when suits may be commenced against certain insurance companies.—*Putze v. Saginaw Mut. Fire Ins. Co.*, 132 Mich. 670-677 (Justices Hooker and Grant dissenting). There would seem to be no sound reason why the word "due" should be given the meaning of "past due" in construing the Act before us. That construction would enable an indebted stockholder to transfer his stock, lien-free, at any time before his debt matured. Had the Legislature supposed that it was leaving open so wide an avenue of escape, it is fair to assume that Sec. 27 of the Act would not have been confined to the subject of indebtedness arising after transfer.

In view of the purpose of the legislation, the mischief arising from an opposite construction, the trend of decision, and utterances of text writers, it is safe to assert that the words "debts due" as used in this section of the Act, mean *debts owing, whether matured or unmatured*.—*Cook's Corp.* (Sec. 527; *Thomp. Corp.* Sec. 2327. (A similar question was raised, but was not decided, in *Citizens Bank v. Kalamazoo Bank*, 111 Mich. 313-320.)

§214. Consolidated Corporation Law.—Section Relating to General Amendments.

Section 17. Every corporation organized or existing under the provisions of this act may at any annual meeting or any meeting duly called for that purpose, by a resolution adopted by a vote of two-thirds in interest of its capital stock, amend its articles of association in any manner not inconsistent with the provisions of this act, but such amendment shall not become operative until a copy of such resolution, signed by the president and secretary of the corporation, shall have been recorded as is provided herein for the recording of original articles of association, when such amendments shall have the same force and effect as though said amendments had been included in the original articles, and the record, or a copy of the record, of such resolution, certified as provided in section nine, shall be received in all courts of this state, as prima facie evidence of the things therein stated.

§215. Amendment of Articles.

Pursuant to the provisions of this section of the Act, all amendments (except increase or decrease of the capital stock, which may be accomplished only as provided by Sec. 2 of the act) consistent with the enabling law, may be made.—*People v. Green*, 116 Mich. 505; *People v. Plainfield Gravel-Road Co.*, 105 Mich. 9.

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§216. Extension of Corporate Existence.

Corporate existence may be extended by an amendment made in conformity with this provision, to any date being not more than thirty years from the date of original organization.—Ovid Elevator Co. v. Secretary of State, 90 Mich., 466-469.

§217. Amendments Increasing or Diminishing Capital Stock.

This section does not apply to changes of the amount of the capital stock. In such cases, even though other amendments are included (such as a change of corporate name), the procedure must conform to the requirements of Sec. 2 of the act, and the president and a majority of the directors (instead of the president and secretary) must make the certificate.—Continental Paint Co. v. Secretary of State, 128 Mich. 621.

§218. Amendments De Facto.

A duly adopted resolution of amendment, remaining unrecorded, becomes an amendment *de facto*, and can be objected to by the state only.—Hoeft v. Kock, 123 Mich., 171.

§219. Amendments Must Not Violate Obligation of Contract.

A class of preferred stock may be created by a three-fourths vote in value of interest. (Act Sec. 35). But when created such preference may not be abolished, except by unanimous assent of holders of the preferred shares. The preference is a contractual right, which, when once invoked, no majority has power to set aside.

§220. Consolidated Corporation Law.—Section Relating to Removals.

Section 18. Any corporation organized or existing under the provisions of this act may remove its place of business from any city, village, or town in this state where it is or may be located, to any other city, village, or town in this state by a vote of two-thirds of its stockholders in interest. But in case of a removal from one county to another, the president and secretary of such corporation shall attach to their articles of association, a certificate that such corporation has thus removed and said articles of association, together with said certificate, shall be left for record immediately on such removal, in the office of the county clerk of the county to which such corporation shall remove, and they shall be recorded by such clerk, at full length in the book kept by him for that purpose. And the president and secretary of such corporation shall immediately upon such removal, cause a certificate thereof, to be recorded in the office

of the Secretary of State, and also in the office of the county clerk of the county from which it removes.

§221. Removal from County.

It was early held in this State, that removal from one county to another, if without legislative permission, violated the charter.—Attorney General v. Oakland County Bank, Walk. Chan. (Mich.) 90-97; People v. Oakland Co. Bank, 1 Doug. (Mich.) 282; Underwood v. Waldron, 12 Mich. 73; Thompson v. Waters, 25 Mich. 241. Hence, permission has been given. This refers to the *place of business*—the county where the articles are recorded; the place where the corporation *resides* for purposes of taxation, and where process may be served—as distinguished from its place of operation.

Removal of the business office from one county to another, within this State, is to be attended by three distinct acts:

(a) The articles of association, with a certificate of removal attached, executed by the president and secretary, are to be immediately recorded in the office of the county clerk of the county to which the office is removed;

(b) The certificate of removal is to be immediately recorded in the office of the Secretary of State;

(c) A like certificate should be immediately recorded in the office of the county clerk of the county from which the corporation has removed.

As a matter of practice, the certificate of removal may be executed in triplicate, and should be acknowledged by the executing officers, although the statute does not affirmatively require acknowledgment.

There is no penalty imposed for failure to make or record the certificate. The State alone can complain.

§222. Consolidated Corporation Law.—Section Relating to Recording Fees.

Section 19. The Secretary of State and any County Clerk, after recording the articles of association and certificates specified by this act to be recorded by them, shall return the same, each with his endorsement of record thereon, to said corporation; and for recording the articles of association and certificates required in this act, the Secretary of State and County Clerk shall each be entitled to receive at the rate of twenty cents for each folio.

§223. Legal Folio.

It is provided by C. L. 1897, Sec. 11239, as follows: "The term '*folio*' when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every figure necessarily used, as a word; and any portion of a folio when in the whole draft or paper

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there shall not be a complete folio, and when there shall be any excess over the last folio, shall be computed as a folio."—That mere estimates are not the proper method by which to fix recording fees, see *Thornton v. Sturgis*, 38 Mich. 642.

§224. Consolidated Corporation Law.—Section Relating to Business Offices.

Section 20. It shall be lawful for any corporation organized or existing under the provisions of this act to establish an office or offices for the transaction of business without this state and within the United States, and to hold any meeting of stockholders or directors of such company at such office so provided for: Provided, that there shall always be one business office within this state and that service of any notice or process may be made upon the agent in charge of such office, which shall be binding upon such corporation. The place of holding such offices shall be fixed by a vote of a majority of the stockholders at any lawful meeting called for that purpose, and after being fixed shall not be changed within one year, and shall be certified by the directors of such corporation to the Secretary of State of this state within two months from the time such office or offices were so located.

§225. Business Office Within This State.

A fair construction of this section of the act would lead to the conclusion that there must not only be a business office maintained in Michigan by every corporation organized under this act, but that there must be, as well, a resident agent in charge of such office. While the statute omits to require, in terms, the presence of a resident agent, there is a clear implication that the office shall be in charge of some one capable of receiving service of process. Probably under the strict rules of construction applicable to Sec. 23 of the act, mere failure to have such an agent would not render the directors liable for corporate debts. Substituted service of process being permitted (Act. Sec. 30) absence of the agent would work no injury to creditors. Undoubtedly an actual office, maintained, but not established by vote of the stockholders, nor certified as required by law, would be a *de facto* office, and service of process at such office would be valid.

§226. Transfer Books to be Kept Within State.

Where the principal office of the corporation is outside this State, a list of stockholders and a transfer book must be kept within this State.—C. L. 1897, Sec. 8567. And transfers may be made at the local office where the transfer book is kept.—Id. Sec. 8568.

§227. Consolidated Corporation Law.—Section Relating to Withdrawal of Capital.

Section 21. If the capital stock of any such corporation shall be withdrawn, and refunded to the stockholders before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be jointly and severally liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to him or them respectively.

§228. Dividends Paid from Capital Stock.

This provision was passed upon in *American Steel & Wire Co. v. Eddy*, 130 Mich. 266. In that case, Chief Justice Hooker said: "We see no reason to doubt that such dividends" (i. e. dividends paid out of the capital stock) "could be reached if there were no statute, as being a fraudulent disposition of assets. This statute provides a new procedure, permitting one who has exhausted his remedy against the company, (if not others), to sue the stockholders in an action at law.....The preferred stockholder is not excepted by this statute, and has no greater right to a dividend from the capital stock of an insolvent corporation than has any other stockholder, until the debts are paid."

When it established that a payment of dividends has impaired the capital stock, it is immaterial that the payment was made and received in good faith.—*American Steel & Wire Co. v. Eddy*, 138 Mich. 403-408. See also *Brewer v. Michigan Salt Association*, 58 Mich., 351-355; *Lockhart v. Van Alstyne*, 31 Mich., 75. Dividends so paid from capital stock may be followed by creditors and recovered from stockholders who receive them.—*American Steel & Wire Co. v. Eddy*, ante.

§229. Sale Not Withdrawal.

The fact that all the property of a corporation has been sold to one of its stockholders is not evidence of withdrawal of capital stock. The presumption is that the corporation received an equivalent in return.—*Chase v. Michigan Telephone Co.*, 121 Mich., 631-637.

§230. Consolidated Corporation Law.—Section Relating to Dividends.

Section 22. If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, knowing such corporation to be insolvent, or that the payment of such dividend would render it so, the directors assenting thereto shall be jointly and severally liable in an action founded

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on this statute, for all debts due from such corporation at the time of paying or declaring such dividend.

§231. Dividends.

"A dividend is a fund which a corporation sets aside from its profits to be divided among its members.....It is a sum which can be divided among stockholders without touching the capital stock."—Justice Cooley in *Lockhart v. Van Alstyne*, 31 Mich. 75.

The directors have exclusive power to declare dividends and to fix the amount thereof.—*Hunter v. Roberts*, 83 Mich., 63.

This provision of the act is designed to prevent the managing board from dissipating the corporation's capital by way of dividends. It exerts a salutary influence in discouraging the temptation to distribute funds equitably belonging to creditors, or to simulate corporate prosperity by dividing fictitious profits. The statute is penal; assenting directors alone become liable, and the right of contribution exists.

§232. Consolidated Corporation Law.—Section Relating to Violations of Act.

Section 23. If any corporation organized or existing under this act shall violate any of its provisions, the directors ordering or assenting to such violation, shall be jointly and severally liable in an action founded on this statute, for all debts contracted after such violation as aforesaid, to the extent of three times the amount paid in on the stock standing in the name of such director in any such corporation.

§233. Assent to Violation.

In *Patterson v. Minnesota Mfg. Co.*, 41 Minn. 84; 4 L. R. A. 745, in sustaining an action brought against a director under a statute almost identical with this section, Justice Mitchell said: "Plaintiff's contention is that it is the duty of a director to know what is being done in corporate matters; that it is negligence for him not to know,—and therefore he is conclusively presumed to have known, and, not objecting, he must be deemed assenting. Such a construction would impose this severe, statutory liability for at least every act of mere negligence for which he would be liable at common law; but, as the act is highly penal, we do not think it ought to receive so broad a construction. The language of the various sections all tends to indicate that the legislature intended that something more than mere negligence should be necessary to subject a person to those heavy penalties,—something amounting to wilful, or at least intentional, violation of legal duty either ordering the act done, participating in doing it, or assenting to its being done with knowledge that it was being, or about to be, done.

"This assent, however, need not be express. If a director knew that a violation of law was being, or about to be, committed, and made no objection when duty required him to object, and when he had the opportunity of doing so, this would amount to 'assent.'"

§234. Liability Extends Only to Debts.

Justice Cooley, in passing upon a similar statute, said: "This statute, it will be perceived, only makes the directors personally liable for 'debts.' Liabilities of the company which may give rise to causes of action against it and result in judgments are not within the statute unless they constitute present debts."—*Lockhart v. Van Alstyne*, 31 Mich. 78; *Wachusett National Bank v. Steel*, 135 Mich. 688; *Leighton v. Campbell*, 17 R. I. 51, 9 L. R. A. 187.

§235. Misjoinder of Counts.

This statute is highly penal.—*Gennert v. Ives*, 102 Mich. 547; *Grand Rapids Savings Bank v. Warren*, 52 Mich. 557-561; *Breitung v. Lindäuer*, 37 Mich. 217. An action founded upon a penal statute cannot be joined with an action at common law.—*Hogsett v. Ellis*, 17 Mich. 351-359; *People v. Judges*, 1 Doug. (Mich.) 434-447. Thus, where the common counts in assumpsit were added to special counts based upon this statute, it was held a misjoinder of causes of action—*Wachusett National Bank v. Steel*, 135 Mich. 688.

§236. Consolidated Corporation Law.—Section Relating to Notice of Lien.

Section 24. Any corporation organized or existing under this act, which has a lien upon the stock of any stockholder therein as provided by the sixteenth section, may give notice to such stockholder that unless he shall pay his indebtedness to said corporation within three months from the time of giving such notice, then such corporation will proceed to sell and transfer the stock of such stockholder in said corporation, and upon default of payment said corporation may sell the stock of such indebted stockholder as hereinafter provided, and any such corporation may prescribe by its by-laws the manner of giving the notice required by this section.

§237. Lien for Debts Due.

We have seen that the term "debts due," as used in Sec. 16 of the Act, includes debts *owing* from the stockholder to the corporation, whether such debts have matured or are to mature at some future time. To this we may add, that it includes *all* debts, regardless of when and how contracted.

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Thus, the lien attaches for a debt owed by the stockholder as a surety, guarantor, indorser, or as a partner in another concern.—*Citizens Bank v. Kalamazoo Bank*, 111 Mich. 313. And the lien attaches to dividends as well as to the stock.—*Cook's Corp.* Sec. 526.

The lien follows the stock, even into the hands of innocent purchasers or pledgees who have given value.—*Citizens State Bank v. Kalamazoo Co. Bank*, 111 Mich. 313; *Oakland Co. Savings Bank v. State Bank*, 113 Mich. 284; *Michigan Trust Co. v. State Bank*, 111 Mich. 306; *Newberry v. Detroit etc. Iron Co.*, 17 Mich. 141. In this respect a statutory lien differs from a lien created by by-law.—*Just v. State Savings Bank*, 132 Mich. 600-607; *Bronson Electric Co. v. Rheubottom*, 123 Mich. 608.

§238. Foreclosure of Lien.

Foreclosure of the lien, being a statutory proceeding for the divestment of a property right, the statute must be strictly pursued. Equity has no jurisdiction to decree foreclosure of such a lien, except for the purpose of doing justice between the parties in a suit brought for other purposes.—*Aldine Mfg. Co. v. Phillips*, 118 Mich. 162.

Should the by-laws fail to provide for the manner of giving notice, personal notice will be necessary, and notice by mail would be insufficient.—*Tuttle v. Mich. Air Line R. Co.*, 35 Mich. 246. Where the by-laws provide for the giving of notice by mail, that method will be sufficient.—*Stradley v. Cargill Elevator Co.*, 135 Mich. 367. As a matter of practice, such notices, when sent by mail, should be sent by *registered* mail. Where the by-laws provide a method of serving notice, that method must be followed.—*Westcott v. Mining Co.*, 23 Mich. 144.

§239. Consolidated Corporation Law.—Section Relating to Foreclosure of Lien on Stock.

Section 25. Such corporation may, at any time within six months after it shall have given the notice required by the preceding section to such indebted stockholder of its intention to sell such stock, and the three months' notice shall have expired, advertise in one or more newspapers published in said county where such corporation is located, and if there is no newspaper published in said county, then in a newspaper published in an adjoining county, giving at least three weeks' notice of the time and place when and where such stock will be sold, and at the time and place of sale shall state the amount due from such stockholder to such corporation, and then proceed to sell for cash at public auction, to the highest bidder therefor, so much of the stock of such indebted stockholder as shall pay in full the indebtedness of such stockholder to such corporation, together with the necessary costs of sale; and if the sale of the

entire stock of such indebted stockholder shall not be sufficient to pay in full the claim of said corporation on said stock, such corporation shall credit the amount received for such stock, less the costs of sale, to said indebted stockholder, and may proceed to collect the remainder of their debt by any proper action for that purpose.

§240. Notice.

"Three weeks' notice" means one notice published three full weeks before the date of sale.—*Lane v. Burnap*, 39 Mich. 736. It does not mean a notice published three successive weeks. Yet, because the statute has not been judicially construed, and because the remedy is a harsh one in most instances, it is not deemed good practice to proceed with the minimum notice allowed, but rather with the maximum notice suggested. The better procedure is to publish the notice once in each week during a period of three successive weeks (making, in all, four insertions) prior to the date of sale. The first insertion should be three clear weeks, or more, prior to the selling date. The day of first publication and the day of sale should be excluded in computing the time.—*Cox v. Commissioner*, 83 Mich. 193-194; *Platt v. Commissioner*, 38 Mich. 247-248; *Lane v. Burnap*, 39 Mich. 736-738; *Powers' Appeal*, 29 Mich. 504-508.

Proof of publication should be procured and preserved as a warrant for subsequent proceedings.

For form of Notice of Sale, see Sec. 465 post.

§241. Recovery of Deficit.

Assumpsit lies for recovery of the deficit if the stock, on sale, fails to bring the amount of the lien and costs of sale.—*Carson v. Arctic Mining Company*, 5 Mich. 288; *Merrimac Mining Co. v. Bagley*, 14 Mich. 501-504.

As to liens on stock see Sec. 85 ante.

§242. Consolidated Corporation Law.—Section Relating to Transfer After Foreclosure.

Section 26. Whenever the purchaser of said stock shall have complied with the conditions of said sale, the corporation shall issue new certificates of stock to such purchaser, or to their order, and shall cancel upon the books of the corporation the certificates of such indebted stockholders, and the new certificates so issued shall entitle the holder thereof to all the privileges, rights and interests of a stockholder in such corporation.

§243. Cancellation of Certificates.

There being no such thing as a *bona fide* purchaser of lien-encumbered shares under this Act, cancellation of the outstanding certificates after sale

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is of no importance. The law contemplates that a record of the fact of sale upon foreclosure shall be kept. The purpose is to inform future officers of what has been done, so that, in case the old certificates are afterward presented for transfer, the fact of their cancellation by foreclosure shall appear.

There is no doubt that a regular sale under a valid statutory lien will vest perfect title in the purchaser.

§244. Consolidated Corporation Law.—Section Relating to Secondary Liens.

Section 27. Whenever any stockholder in any such corporation shall have made a transfer or assignment of his stock as security for his indebtedness to a third party, and afterwards shall become a debtor to such corporation, such corporation may sell the equity of redemption of such stock in the same manner as is provided for the sale of stock on which it has a lien, and shall credit the amount received from such sale to such indebted stockholder. Such corporation may require the party holding the transfer or assignment of such stock, to give a statement to the treasurer of such corporation, under oath, of the amount for which said stock was pledged; and if said party shall not give such a statement at or before the time such sale is to take place, he shall forfeit all claim and lien on such stock or any part thereof, and such corporation may sell the same as herein provided.

§245. Secondary Liens.

This section is meant to provide for the foreclosure of a secondary lien—a lien upon an equity of redemption. The provision is badly drawn. It includes cases where it is inapplicable, and omits cases where it might be beneficial. The section apparently proceeds upon the theory that secondary liens arise in only one way,—i. e., through debts contracted after transfer—and that the lien for such debt is *always* secondary. Both of these notions are fallacious.

(a) Where a corporation, through some act, is estopped to deny that a pledgee has a superior claim, its lien becomes secondary to his, although it may grow out of debt pre-existing the pledge.—*Oakland County Savings Bank v. State Bank*, 113 Mich. 284.

(b) *In the absence of notice to the corporation, an unregistered pledge is secondary to a statutory lien arising out of a subsequent indebtedness of the pledgor to the company.*—*Michigan Trust Co. v. State Bank*, 111 Mich. 306.

(c) But if the corporation is given *actual notice* of the transfer by entry on its books, or otherwise, its lien for debts of the transferor

contracted thereafter is subject to the rights of the transferee.—Curtice etc. Co. v. Bank, 118 Fed. Rep. 390; Birmingham Trust & Savings Co. v. Louisiana National Bank, 99 Ala. 379, 20 L. R. A. 600.

§246. Consolidated Corporation Law.—Section Relating to Levies.

Section 28. Nothing contained in the four preceding sections shall affect any lien or right acquired by any other party by virtue of any attachment or levy of execution upon the stock of any stockholder in any such corporation.

§247. Levies Upon Stock.

This section of the act does not mean that levies shall be superior to pre-existing corporate liens. Corporate liens upon stock for debts of stockholders are created by Sec. 16, of the act, and not by any of "the four preceding sections." The evident purpose of this section is to declare that these preceding sections have nothing to do with the subject of levies, and that levies are still wholly governed by C. L., 1897, 10335-10339 and amendments thereto. See Act 219 of 1903.

Purchasers of shares at execution sale acquire no better title than was held by the execution debtor at the time of the levy.—Newberry v. Detroit, etc., Co. 17 Mich. 141; May v. Cleland, 117 Mich. 45.

The right to levy upon shares of a corporation is confined to cases where the debtor's status is that of a stockholder and legal possessor of the interest seized. The right of levy does not extend to mere equitable interests. Van Norman v. Jackson Circuit Judge, 45 Mich. 204-210. Nor can it be exercised when the debtor has assigned his stock, even though the transfer has not been made upon the books of the company.—Newberry v. Detroit etc., Co., ante.

§248. Consolidated Corporation Law.—Section Relating to Labor Debts.

Section 29. The stockholders of all corporations organized or existing under this act shall be individually liable for all labor performed for such corporations, which said liability may be enforced against any stockholder by action founded on this statute, at any time after an execution shall be returned unsatisfied, in whole or in part, against the corporation, or at any time after an adjudication in bankruptcy against said corporation, and the amount due on such execution shall be *prima facie* evidence of the amount recoverable, with costs against any such stockholder; and if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof.

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he shall have the right to call upon all of the responsible stockholders to contribute their equal part of the sum so paid by him as aforesaid, and may sue them, jointly or severally, or any number of them, and recover in such action the amount due from the stockholder or stockholders so sued.

§249. Liability for Labor Debts.

The term "labor" as here used, refers to *manual* labor.—Appeal of Clark, 100 Mich. 448. Labor performed by a man's team is regarded as having been performed by the man himself.—Chicago & N. E. R. Co. v. Sturgis, 44 Mich. 538-540.

A labor claim cannot be split up into separate actions.—Milroy v. Spurr Mountain etc. Co., 43 Mich. 231. The laborer himself may proceed under this statute, but his assignee is limited to the procedure prescribed by C. L. 1897, Sec. 8554, et seq.—Musselman v. Wright, 107 Mich. 639-642; Connors v. Carp River Iron Co., 54 Mich. 168.

§250. Execution Unsatisfied.

The sheriff's return of an execution *nulla bona* is conclusive as between the parties.—Michael v. Stork, 52 Mich. 260. The creditor is not bound to look beyond the county where he has obtained judgment.—Ripley v. Evans, 87 Mich. 217-226. Judgment against the corporation is conclusive upon the stockholders.—Mutual Fire Ins. Co. v. Furniture Co., 108 Mich. 170-176. They may, however, attack it on the ground of collusion or fraud.—McBryan v. Universal Elevator Co., 130 Mich. 111-116; Bohn v. Brown, 33 Mich. 257.

It has been held that the return *nulla bona* of a Justice Court execution was sufficient in a case within the exclusive original jurisdiction of that court, i. e. a case involving less than \$100.—Voight v. Dregge, 97 Mich. 322-325.

§251. Consolidated Corporation Law.—Section Relating to Service of Process.

Section 30. Service of any notice or legal process against any corporation formed or existing under this act may be made on the president or any vice-president, secretary, treasurer, assistant secretary or treasurer, general manager, superintendent, cashier or any other officer of the corporation, or upon the agent in charge of any business office of such corporation within this state, or if neither of such officers or agents can be found, then such service may be made by posting a true copy thereof in some conspicuous place at the business office of the corporation in this state.

§252. Service of Process.

It is within the power of the Legislature to place corporations on exactly the same footing as individuals with respect to the service of process upon them.—*Potter v. Hutchinson Mfg. Co.*, 79 Mich., 207-209.

This section of the Act is permissive and not mandatory. It is consistent with C. L. 1897, Sec. 10468, and the two stand together. Process served in the manner prescribed by either is good.—*Moinet v. Burnham, Stoepel & Co.*, 143 Mich. 489; *Goodrich v. Hackley-Phelps-Bonnell Co.*, 141 Mich. 343.

Since Act Sec. 30 and C. L. Sec. 10468 have been practically united by construction, it is no longer necessary that service be made upon an agent in charge of a business office. In the *Hackley* case (ante) it was held that service upon a corporation organized under this Act may be had upon agents who are not, as well as upon agents who are, in charge of the business office. In the *Moinett* case (ante) service in Clinton County (where plaintiff resided) upon a traveling salesman of a defendant corporation organized under this Act and having its business office in Detroit, Wayne County, was held good. These decisions modify the force of *Toledo Ice Co. v. Munger*, 124 Mich. 4, although they do not overrule it.

Service upon an agent having an interest in the suit adverse to that of the corporation is unauthorized.—*Atwood v. Sault Ste. Marie Light Co.*, 148 Mich. 224.

§253. Consolidated Corporation Law.—Section Relating to Taxation.

Section 31. All corporations formed or existing under this act shall be liable to be assessed for all real and personal estate held by them in this state, at its true value, and shall pay thereon a tax for township, village, city, county and state purposes, the same as other real and personal estate, and such tax shall be assessed, collected and paid in the same manner as other taxes on real and personal estate are required to be assessed, collected and paid; Provided, nothing herein contained shall authorize the taxing of the capital stock of such corporation as such capital stock.

§254. Taxation.

A corporation whose property is taxable in this state stands upon the same footing as an individual.—*Graham v. Township of St. Joseph*, 67 Mich. 652. See also Act 235 of 1903.

§255. Residence.

While, it seems, the corporation cannot deny that its residence is as set forth in its articles, or in certificates amendatory thereof, nevertheless

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the state may go behind this statement and tax the property of the company where its real office for the transaction of business is kept.—*Detroit Transportation Co. v. Assessors*, 91 Mich., 382; *Milwaukee Steamship Co. v. Milwaukee*, 18 L. R. A. 353; *Detroit v. Lothrop Estate*, 136 Mich. 265; *Teagan Transportation Co. v. Detroit*, 139 Mich. 1; *Detroit A. A. & J. Ry. v. City of Detroit*, 141 Mich. 5.

§256. Franchises.

In fixing the value of the property of a private corporation, the assessing officers have a right to take into consideration the extent to which special franchises enhance the value of the corporation's tangible property.—*Citizens' Street Ry. Co., v. Common Council*, 125 Mich. 673.

§257. Specific Taxes Constitutional.

The legislature has constitutional power to impose a specific tax upon a private corporation, upon the basis of the company's authorized capital stock as an arbitrary standard of valuation.—*Attorney General, ex rel Beadle v. Arnott*, 145 Mich. 416-419; *Const. of 1850, Art 14; Sec. 10; Const. of 1908, Art. 10, Sec. 4.*

§258. How and Where Assessed.

"All corporate property, except where some other provision is made by law, shall be assessed to the corporation as to a natural person, in the name of the corporation. The place where its office is located in its articles of incorporation shall be deemed its residence: Provided, its business is actually transacted at such office; but if it shall establish its principal office in any other place than the place named in its articles of incorporation, then the place where it transacts its principal business shall be deemed its residence for all the purposes of this act. If there be no principal office in this state, then at the place in this State, where such corporation or agent transacts business."—*Act 235 of 1903, p. 385, amending C. L. 1897, Sec. 3834.*

A portion of the above mentioned act, not included in the excerpt here quoted, was held unconstitutional in *Teagan Transportation Co. v. Assessors*, 139 Mich. 1; *Duluth and Atlantic Transportation Co. v. Assessors, Id.*, and *Wolverine Steamship Co. v. Assessors, Id.* See also *Township of Portsmouth v. Cranage Steamship Co.*, 148 Mich. 230, and *Township of Portsmouth v. McGraw Transportation Co. Id.*

§259. Duty to Make Tax Statement.

It is provided by C. L. 1897, Sec. 3841, Am. Act 239 of 1899, p. 375, that "it shall be the duty of every.....corporation to make such tax statement under.....oath."

C. L. 1897, Sec. 3844, Am. Act 154 of 1899, p. 228, provides that: "In every case when any person or member of any firm or officer of any

corporation shall wilfully neglect or refuse to make out and deliver a true and correct sworn statement, under oath, administered by the supervisor or other assessing officer or members of the Board of State Tax Commissioners herein provided for, or other officers, or shall answer falsely or refuse to answer questions concerning his property or property under his control, as required by this act, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not less than thirty days nor more than six months, or by fine not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment in the discretion of the court."

§260. Consolidated Corporation Law.—Section Relating to Seizures.

Section 32. That all articles of machinery, materials for manufacturing, or manufactured articles belonging to any corporation, shall be free from seizure by execution or distress, for any debts or claims for rents or services, in whose hands soever they may be, except such execution or claim be against such corporation.

§261. Exemption from Seizure.

This provision declares no new right. It simply lends emphasis to the fact that the corporation is to be regarded as an entity separate and distinct from its stockholders. The only method by which the interest of a shareholder may be seized is by levy upon his stock.—C. L. 1897, Sec. 10335-10339, Am. Act 219 of 1903, p. 347.

§262. Consolidated Corporation Law.—Section Relating to Extension of Duration.

Section 33. It shall be lawful for any corporation organized or existing under the provisions of this act, whose corporate existence is about to terminate by limitation of law, at its annual meeting next preceding, or at a special meeting called for that purpose, to be held within one year immediately preceding the date of such termination, by a vote of two-thirds of its capital stock, to direct the continuance of its corporate existence for such further term, not exceeding thirty years, as may be expressed in a resolution for that purpose. Upon the adoption of such resolution by the stockholders, it shall be the duty of the president and secretary to make, sign and acknowledge articles of association, as in the case of a new corporation, to which shall be appended a copy of such resolution verified

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by the oath of the secretary, which articles of association and copy of resolution shall be recorded, certified and returned as is provided herein in case of a new corporation, and the record, or a transcript of the record, certified by the Secretary of State of this state under the seal thereof, shall be prima facie evidence of the things therein contained. Upon the expiration of the time limited for the existence of such old corporation, a new corporation shall be deemed to be formed by such articles of association, which shall at once succeed to all the property and rights of action of the old corporation, and shall be liable for all of its debts or other obligations, and the officers of the old corporation shall succeed to like offices in the new corporation, and every stockholder in the old corporation shall be, to a like extent, a stockholder in the new corporation.

§263. "Continuance of Corporate Existence."

It is the plain intent of the statute to continue the life of the original corporation, and not to provide that a new and different corporation shall result from the extension.—*Marshall's Corp.* p. 92-460. A franchise granted to such a corporation, if unlimited, would terminate at the end of the first period of thirty years. It would not be renewed by extension of the corporate duration.—*Rockwith v. State Road Bridge Co.*, 145 Mich. 455; *Wyandotte Elec. Light Co. v. Wyandotte*, 124 Mich. 43. But if granted, without time limit, to the corporation, "*its successors and assigns*," it would remain in force for a period coextensive with the life of the corporation as, from time to time, renewed.—*Detroit Citizens' Street Ry. Co. v. Detroit*, 64 Fed. 628.

§264. Extension of Three Years for Certain Purposes.

For the purpose of prosecuting and defending suits and winding up their business, but not for the purpose of continuing business otherwise, corporations continue to be bodies corporate during a period of three years after expiration or annulment of their charters.—C. L. 1897, Sec. 8534; *Bewick v. Alpena Harbor Co.*, 39 Mich., 700-709.

§265. Consolidated Corporation Law.—Section Relating to General Law.

Section 34. To corporations organized or existing under the provisions of this act, in the absence of any applicable provision herein contained, the provisions of Chapter two hundred thirty of the Compiled Laws of eighteen hundred ninety seven may be applied.

§266. General Law.

The principal provisions of C. L. 1897, Chap. 230, referred to by this section are as follows:

- (a) Cumulative voting law.—C. L. 1897, Sec. 8553.
- (b) Provisions for enforcing individual liability of stockholders in cases not otherwise provided for.—C. L. 1897, Sec. 8554-8566.
- (c) Provisions requiring corporations doing business out of the state to maintain certain records in this state.—C. L. 1897, Sec. 8567-8568.
- (d) Provisions concerning sale of entire assets.—C. L. 1897, Sec. 8572-8573.
- (e) Provisions concerning franchise fee.—C. L. 1897, Sec. 8574-8577.

§267. Consolidated Corporation Law.—Section Relating to Preferred Stock.

Section 35. Any such company shall have power to create and issue certificates for two kinds of stock, viz.: general or common stock, and preferred stock, which preferred stock shall at no time exceed two-thirds of the actual capital paid in, and shall be subject to redemption at par at a certain time, to be fixed by the by-laws of said corporation; and to be expressed in the certificates therefor. And the holder of such preferred stock shall be entitled to a fixed dividend, payable quarterly, half-yearly or yearly, which said dividend shall be cumulative, payable at the time expressed in said certificate, not to exceed eight per cent per annum, before any dividend shall be set apart or paid on the common stock. In no event shall the holder of such preferred stock be individually or personally liable for the debts or other liabilities of said corporation, excepting debts for labor. Said corporation shall be controlled by a board of directors elected by the preferred and common stockholders, excepting when otherwise provided in the articles of association or amendments thereto; Provided always, if at any time upon a fair valuation of the assets of the corporation the common stock shall be impaired in an amount equal to ten per cent thereof, or any dividend due on the preferred stock shall remain unpaid for sixty days, then the holders of the preferred stock shall have an equal right with the common stock, share and share alike, to participate in the election of directors and control of said corporation. If for any reason said corporation shall cease business or become insolvent, then, after payment of all liabilities and debts, the remainder of the assets of said corporation shall be applied first in payment in full of all preferred stock and then unpaid dividends due thereon, and the

§ 268-§ 273 DOMESTIC CORPORATION JURISPRUDENCE

balance divided pro rata, share and share alike among the holders of the common stock. Every corporation organized or existing under the provision of this act may, by a vote of three-fourths in interest of its capital, amend its articles of association providing for the issue of preferred and common stock, in accordance with this section, in the same manner and with the same effect as is now provided by section seventeen of this act, relating to amending articles of association.

§268. General or Common Stock.

This class of stock entitles the holders to an equal pro rata participation in declared net profits, without preference or advantage to one share over another.—Cook's Corp., Sec. 12; Marshall's Corp., p. 590.

§269. Preferred Stock.

Capital usually demands and receives a preference over mere invention, skill or property requiring capital for its operation. This demand of capital is met by the creation of preferred stock. Under the present act the preferred stock has two principal preferences:

- (a) The right to a fixed dividend payable prior to payment of dividends on the common stock and being cumulative;
- (b) The right to priority of participation in net assets upon dissolution.

§270. Two-Thirds Capital.

The expression "two-thirds of the actual capital paid in" is construed to mean two-thirds of the capital paid in at the time of authorizing the issue.—Continental Paint Co. v. Secretary of State, 122 Mich. 621-684. In this case Justice Grant said: "The law means that no preferred stock can be authorized beyond two-thirds of the amount of capital *actually paid in* at the time of the issue."

§271. Redemption.

The time of redemption of preferred stock may be fixed at the date of expiration of the corporation by limitation, unless redemption at an earlier date is desirable.

§272. Stipulations in Certificates.

Valid stipulations contained in stock certificates form a binding contract between the corporation and the holder of the certificate.—McLaughlin v. Detroit & M. R. Co., 8 Mich., 99-102.

§273. Cumulative Dividends.

Cumulative dividends are those which accumulate when passed without payment, so that the whole amount of dividends must be eventually paid.

if ever earned. Cumulative dividends enjoy all the advantages of, so-called, guaranteed dividends.—*Lockhart v. Van Alstyne*, 31 Mich., 75-84; *Marshall Corp.*, p. 590.

Dividends upon preferred stock, like those upon common stock, are payable from profits only.—*Id.*

§274. Preference.

The preferential dividend cannot exceed 8 per cent. per annum. The State Department has made a ruling that articles of association which provide for participation of preferred stock beyond this fixed dividend (for example, a provision that the preferred stock shall share with the common stock in the surplus remaining after payment of the fixed dividend) are not entitled to record. This is contrary to the New Jersey practice under a similar statute. However, until otherwise determined by judicial decision, the ruling will probably stand.

§275. Exemption from Liabilities.

The provision that, "In no event shall the holder of such preferred stock be individually liable for the debts or other liabilities of the corporation," does not include immunity from attack by creditors on account of dividends received in impairment of the corporate capital. Notwithstanding this provision, when dividends are paid from capital stock, they may be followed by creditors into the hands of holders of preferred shares.—*American Steel & Wire Co.*, 130 Mich. 266, *Id.* 138 Mich. 403.

§276. Power of Majority to Create Preferred Stock.

Preferred stock may be created under the terms of this act, although opposed by a minority, provided three-fourths of the capital stock outstanding votes therefor.—*Marshall's Corp.*, 864.

§277. Consolidated Corporation Law.—Section Relating to Excluded Acts.

Section 36. This act shall not include nor apply to any of the corporations provided for in the following statutes: Chapters one hundred sixty to one hundred sixty-four, both inclusive; chapters one hundred sixty-six to one hundred eighty, both inclusive; chapter one hundred eighty-four, chapters one hundred eighty-six and one hundred eighty-seven, both inclusive, chapters one hundred ninety-three to two hundred twenty-nine, both inclusive, of the Compiled Laws of eighteen hundred ninety-seven, as amended.

§278. Excluded Corporations.

For list of corporation to which this act is inapplicable, see Sec. 120, ante.

§279. Consolidated Corporation Law.—Section Relating to Included Acts.

Section 37. This act shall include and apply to all the corporations provided for in the following statutes: Chapter one hundred fifty-eight, one hundred eighty-one, one hundred eighty-two, one hundred eighty-three, one hundred eighty-five, one hundred eighty-eight, one hundred ninety, one hundred ninety-one, and one hundred ninety-two of the Compiled Laws of eighteen hundred ninety-seven, as amended, and in addition shall repeal all other acts and parts of acts inconsistent with the provisions of this act.

But the repeal of the foregoing acts shall not dissolve any corporation formed or existing under them, and all corporations of the nature of the corporations authorized to be organized under this act, now organized and existing under said several acts in this section mentioned, or either of them, shall be deemed and taken to be organizations under this act, and all rights, obligations and liabilities contracted, acquired or incurred by any of such last mentioned corporations thereunder, or under the provisions of any law now in force, not inconsistent with the provisions of this act, shall continue of the same force and effect as though such acts or laws had not been repealed; and all such corporations from and after the taking effect of this act shall be subject to all the provisions hereof as fully as though such organizations had been perpetual thereunder, and such organizations may continue to carry on the business specified in their articles of association under the provisions of this act as lawfully as if said acts mentioned in this section were not repealed: Provided, that nothing in this act contained shall be construed as in any wise affecting any other corporations whatever, organized under the several above named acts, for purposes other than those mentioned in section one of this act, but as to all such corporations the said several acts shall remain in full force.

All corporations hereafter organized for any of the purposes provided for in this act shall incorporate under this act: And provided further, that any corporation mentioned or referred to in this section which, under the law under which it was organized, had the right or power to use the streets, lands and squares of any city, town or village for its corporate purposes, with the consent of the municipal authorities thereof, and under such reasonable regulations as they might prescribe, shall con-

tinue to have such right or power under this act as they enjoyed at the time of the passage of act number two hundred thirty-two of the Public Acts of nineteen hundred three, of which this act is an amendment.

§280. Included Corporations.

For list of corporations embraced within the terms of this act, see Sec. 119 ante.

§281. Constitutionality of Consolidation of Acts.

That this consolidation of acts is constitutionally permissible, see *American Matinee Ass'n v. Secretary of State*, 140 Mich. 579-582; *Grimm v. Secretary of State*, 137 Mich. 134.

DIVISION II
System of Domestic Partnership Associations
Jurisprudence

PART ONE
COMMENTARIES

Chapter I. Partnership Associations, Limited.

PART TWO
THE ANNOTATED ACT

Chapter II. The Act for Partnership Associations, Limited.

DIVISION II

SYSTEM OF DOMESTIC PARTNERSHIP ASSOCIATIONS JURISPRUDENCE

PART ONE—Commentaries

CHAPTER I.

PARTNERSHIP ASSOCIATIONS, LIMITED.

§282. Historical.

§283. Status of Partnership Associations, Limited.

§282. Historical.

This anomalous act was borrowed by Michigan in 1877¹, from the Commonwealth of Pennsylvania, where it had been enacted in 1874². It came to us free from constructions³. Michigan adopted the act itself, but our judiciary has declined, in some important particulars, to follow the interpretation afterwards placed upon the act by the Pennsylvania courts⁴.

1. The Pennsylvania law was copied almost verbatim. The same law was enacted by Virginia in 1875, by New Jersey in 1880 and by Ohio in 1881. New York had adopted a similar law in 1849.

2. *Laffin & Rand Powder Co. v. Steytler*, 146 Pa. 434, 14 L. R. A. 690.

3. *Rouse, Hazard & Co., v. Donovan*, 104 Mich. 234, 27 L. R. A. 577.

4. *Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282-289; *Wood v. Sloman*, 150 Mich. 177-187. In Pennsylvania these associations are held to be modified partnerships. There, failure to comply with the terms of

the statute gives rise to full, common law, partnership liability. "Each partner is liable unless saved by statute. If the partners have not complied with the statutory requisites, a limited partnership has not been formed." *Vanhorne v. Corcoran*, 127 Pa. 255, 4 L. R. A. 386-389; *Rehfuss v. Moore*, 134 Pa. 462, 7 L. R. A. 663-665; *Sheble v. Strong*, 128 Pa. 315; *Eliot v. Himrod*, 108 Pa. 569; *Maloney v. Brue*, 94 Pa. 249; *Imperial Refining Co. Ltd. v. Wyman*, 38 Fed. 504, 3 L. R. A. 503. The same doctrine prevails in Massachusetts.—*Edwards v. Warren, etc. Works, Ltd.*, 168 Mass. 564, 38 L. R. A. 791.

In Pennsylvania, the partnership associations, limited, act is said to have been the result of a gradual evolution⁵. In 1836 the legislature of that state passed an act enabling the formation of a type of partnerships then new to the law. The act provided for general partners having general liability, and for special partners having limited liability, and was similar to the later Michigan act⁶ for the formation of limited partnerships.

The act of 1836 was amended in 1838, by the Pennsylvania legislature, by addition of a provision enabling sale of the interest of partners without working a dissolution. Another amendment, passed in 1858, provided for increase of capital and number of members. In 1865, and again in 1868, the act was further broadened, permission being given to contribute capital in goods at an appraised valuation, to be fixed by an appraiser appointed by the court of common pleas. It was also provided that the words "and Company" might be a part of the firm name, the names of all partners being required to appear upon the firm sign. This was the state of the Pennsylvania law when the act of 1874—the act afterwards adopted in Michigan—was passed⁷. It is instructive to note how, step by step, during a period of thirty-eight years, the provisions typical of the ultimate statute were evolved. Beginning in 1836, by enabling the organization of firms differing but slightly from common law partnerships, the course of legislation moved persistently forward, until, in 1874, it has resulted in an act enabling the formation of associations having all of the salient characteristics of corporations⁸.

5. In *Laffin Powder Co. v. Steytler* (ante), Justice Mitchell, of the Supreme Court of Pennsylvania, said: "The Limited Association Act of 2d June, 1874, was a wide departure from the principles of the common law governing partnerships and the liability of individual partners to the firm creditors. It was not the first, nor has it been the last of such changes. On the contrary, it is but one step in the line of concessions to the business views and habits of a commercial age and community, and it should be considered in the spirit of its enactment."

6. C. L. 1897, Chap. 159 (Sec. 6055 et seq.).

7. *Laffin & Rand Powder Co. v.*

Steytler, Id. In this case Justice Mitchell said of the Pennsylvania act of 1836: "The influence of the common law ideas of partnership is apparent throughout the act. It was manifestly regarded as an experiment to be entered upon cautiously and hedged about with restrictions. But the act met the needs of the community, and, in the language of the present hour, it had come to stay. After more than half a century, it is still on our statute book as the basis of the system, and every change since has been a step forward in the same direction, and not backward."

8. *Liverpool & London L. & F. Ins. Co. v. Oliver*, 77 U. S. 566, 19 L. ed. 1029.

In Pennsylvania, Section 4 of the Act of 1874, was amended in 1885, providing that, there being no rules to the contrary, change of ownership of an interest in such an association would be inoperative to confer membership upon the transferee, in the absence of an election to membership⁹. In 1903, the Michigan legislature amended section 4 of the Michigan act of 1877 in a like manner¹⁰. Thus, in the acts of these two states, as to *essential* provisions, similarity, amounting almost to identity, has been preserved.

During more than a quarter of a century, the partnership associations, limited, act of Michigan, remained practically unchanged¹¹. It seems to have been overlooked and neglected by the legislature. Not so, however, by incorporators and promoters. Until 1903 these associations were not required to file their articles of association with the Secretary of State, and hence they were not within the terms of the statute requiring payment of franchise fees¹². Companies, both legitimate and illegitimate, having large authorizations of capital stock, found organization under this act a matter of economy—a direct saving of fifty cents upon each thousand dollars of capital stock authorized.

There were other advantages. The "statement in writing," as the articles were called in the statute, was recorded with the register of deeds, and did not run the gauntlet of scrutiny by the Department of State. Moreover, property could be put in as payment of subscriptions "at a valuation to be approved by all the members," and no annual reports to the state were required. As a result of this looseness of procedure, these associations became the common vehicle of "wildcat" schemes. Gross overcapitalizations "paid up" in shadowy assets taken at overvaluations may be said to have been the rule. Then came the amendments of 1903¹³ and the popularity of the "limited law" passed away like an April snow. The light of publicity fell upon the dark places. The articles were now required to be recorded in the office of the Secretary of State, and in the office

9. *Carter v. Producers' Oil Co.*, 182 Pa. 551, 39 L. R. A. 100.

10. Act 244 Pub. Acts 1903, p. 398.

11. Sec. 4 of the act was amended by Act 26 Pub. Acts 1881, p. 258 and again by Act 21 Pub. Acts 1885, p. 16.

12. C. L. 1897, Sec. 8574.

13. Act 244 Pub. Acts 1903, p. 398. Section 10 of the law was slightly changed by Act 188 Pub. Act, 1905, p. 278. There were no changes in 1907 and 1909, except that in the latter year the benefits of the cumulative voting law were extended to these associations.

of the clerk of the proper county, and annual reports to the State Department were exacted.

The amendments of 1903 consisted of a revision of sections 1 and 2 of the law, and the addition of new sections 12, 13, 14, 15 and 16. The operation of these additions placed partnership associations, limited, practically upon the footing of corporations.

The opinion is prevalent that these amendments emasculated the law; that its usefulness is at an end. Truly it has been overshadowed by the popularity of the consolidated corporation act. The organization of limited associations has been infrequent since 1903. Nevertheless the point is here made—and evidence in its support will be given later—that these associations, under certain circumstances, may still be organized advantageously. It may as well be pointed out now, that, with all its crudities, all its narrowness of detail, the partnership associations, limited, act is, in essentials, our broadest enabling law.

§283. Status of Partnership Associations, Limited.

Though the terms are often used interchangeably in the decisions of other jurisdictions, there is, under the statutes and precedents of Michigan, a wide distinction between Limited Partnerships and Partnership Associations, Limited. The former are but modified partnerships, having special partners whose liability is limited by statute, and having general partners whose liability remains unlimited, as at common law¹⁴. No one would mistake such an organization for a corporation. However, partnership associations, limited, have been pronounced corporations¹⁵,

14. C. L. 1897, Chap. 159, Sec. 6056.

15. *Liverpool & London Life & Fire Insurance Co. v. Oliver*, 77 U. S. 566, 19 L. ed. 1029. In this case it appeared that the Liverpool, etc., Insurance Co. had been organized under a deed of settlement, enlarged and legalized by acts of Parliament, which declared, among other things, that the association *should not be a corporation*. It possessed many of the characteristics of a partnership association, limited. Speaking for the court, Justice Miller said: "Whatever may be the effect of such a declaration, it cannot alter the es-

sentia nature of a corporation, or prevent the courts of another jurisdiction from inquiring into its true character whenever that may come in issue..... We have no hesitancy in holding that, as the law of corporations is understood in this country, the association is a corporation." *Tide Water Pipe Co. v. State Board* (N. J.), 27 L. R. A. 684. In this case the Supreme Court of New Jersey held the Tide Water Pipe Co. to be a corporation, although the Supreme Court of Pennsylvania (the state where the company had been organized) had previously declared the same company a limited partnership.

both by eminent courts and by able lawyers¹⁶. The array of evidence in support of this view is of great probative force. We find in the act a grant of every power and immunity essential to corporation capacity, viz.:

- (a) Power of continuous succession under an adopted name (Act Sec. 1);
- (b) Power to sue and to be sued (Act Sec. 10);
- (c) Power to make by-laws (Act Sec. 4 and 5);
- (d) Power to purchase, hold and make conveyance of, land in the company name (Act Sec. 10);
- (e) Power to have a common seal (C. L. 1897, Sec. 10196);
- (f) Immunity of members from liability for company debts (Act Sec. 1), except labor debts, unpaid subscriptions (Act Sec. 2) and penalties for misconduct (Act Sec. 3, 13, 14).

It is earnestly argued that the sum of these attributes is a corporation. Certainly the courts of a foreign jurisdiction, where the intent of our legislature is not binding¹⁷, would find no difficulty in adducing sound reasons in support of such a conclusion. But Michigan courts are not at liberty to disregard the manifest intent of the legislative department of our state government. In fact that intent, when ascertainable, must be accorded controlling influence in matters of construction¹⁸. It can hardly be argued from the phraseology of the act that, by the title "Partnership Associations," the legislature really meant "corporations."

Standing alone, the mere matter of name might not be conclusive. But when it is remembered that, during more than thirty years, our legislature has carefully refrained from treating these organizations as corporations¹⁹,—always mentioning them as "associations" or "partnership associations" when it has been desired to expressly embrace them in legislation applicable

16. See brief of counsel for defendants in error in *Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282, 38 L. R. A. 798.

17. *Liverpool & L. L. & F. Ins. Co. v. Oliver*, 77 U. S. 506. 19 L. ed. 1029; *Tide Water Pipe Co. v. State Board*, 27 L. R. A. 684.

18. *Michigan Central R. Co. v. State*, 148 Mich. 151-156.

19. *Attorney General v. McVichie*, 138 Mich. 387-390. In this

case Justice Hooker stated that "The legislature has for years avoided applying the name 'corporation' to these associations, and designated them by the name of 'partnerships'; and it is not, in our opinion, unreasonable to conclude that it was not their intention to include them under the term 'corporations' in this (cumulative voting law, C. L. 1897, Sec. 8553) statute."

to corporations²⁰,—there can be no latitude for doubt concerning the legislative intent.

There are other incidents, peculiar to these associations, tending to confirm the view that they are not, strictly speaking, corporations.

(a) Unless the articles of association provide otherwise, a transfer of shares does not invest the transferee with membership and voting rights, in the absence of an election to membership²¹.

(b) The managers may act by concurrence of *less than a majority* (if there are five managers) and may bind the association without the formality of a meeting. In associations for buying and selling merchandise, the stockholders may, without consulting the managing board, confer upon a single manager the power to purchase merchandise, make contracts and issue notes²². This may be accomplished without the formality of a stockholder's meeting²³.

There is no doubt that innovations of this kind might be, at the will of the legislature, embodied in the enabling act of a strictly corporate body. But, if it were done, it would be a departure from the settled policy of corporation law as developed in this State. Appearing, as they do, in the partnership associations statute, these divergences from fixed principles of corporation legislation serve to widen the line of demarcation between such associations and corporations.

The Supreme Court of Michigan has used language which might be readily construed as a denial that partnership associations are either partnerships or corporations²⁴, but no apt word has been suggested for the characterization of such companies. For want of a better term, we may call them quasi-corporations²⁵.

20. Attorney General v. McVichie (ante), C. L. 1897, Sec. 10194-10198.

21. Post Sec. 296.

22. Post Sec. 315.

23. Post Sec. 315.

24. In *Starr v. Shepard*, 145 Mich. 302-306, Justice Ostrander said, in substance, of a partnership association: "The company is not strictly a corporation and (is) not a partnership." In *Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282, the Supreme Court expressly declined to follow

the Pennsylvania courts in holding members of a defectively organized partnership association charged with the liabilities of partners. In the course of that decision, Justice Grant said: "The statute contains not a sentence from which any individual or partnership liability can be inferred."

25. Partnership associations are sometimes designated as "joint stock companies." In Massachusetts, Pennsylvania, and other jurisdictions, where such associations are treated

In Michigan these quasi-corporations are governed by the general principles of law applicable to private corporations²⁶. A general statute applicable to "all corporations" does not necessarily extend to them²⁷, but it seems that it may²⁸. In the absence of any guiding decision upon this point, we may hazard the rule to be, that general corporation statutes will be deemed to include partnership associations, when not inconsistent with the peculiar character of such associations, nor with the manifest legislative intent, and when such inclusion will operate beneficially to the interests of the public²⁹.

as modified partnerships, this designation is proper. A joint stock company is a quasi-partnership.—Bouvier Law Dict. But in Michigan partnership associations are governed by the law of corporations, hence the term quasi-corporations may be accurately applied.—*Marshall's Corp.*, p. 51. See *Staver & Abbott Co. v. Blake*, 111 Mich. 282-286. However, in Pennsylvania, these associations are called quasi-corporations.—*Briar Hill Coal & Iron Co. v. Atlas Works*, 146 Pa. 290-293.

26. *Rouse, Hazard & Co. v. Detroit Cycle Co.*, 111 Mich. 251-257; *Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282; *Wood v. Sloman*, 150

Mich. 177; *Armstrong, et al., v. Stearns*, 16 D. L. N. 288-290. (Decided May 26, 1909).

27. *Attorney General v. McVichie*, 138 Mich. 387-389.

28. *McKee v. City Garbage Co.*, 140 Mich. 497-503.

29. The term "corporation" as used in Art. XII of the Michigan Constitution of 1908, includes "all associations and joint stock companies." While, as pointed out in *Attorney General v. McVichie* (ante) this rule of construction does not extend to all legislative enactments, it does at least indicate the fundamental policy of our law—a policy of broad construction.

PART TWO—The Annotated Act

CHAPTER II.

THE ACT FOR PARTNERSHIP ASSOCIATIONS, LIMITED.

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- §329. Franchise Fee.
- §330. Partnership Associations, Limited, Law.—Section Relating to Annual Reports and Notice of Change of Status.
- §331. Penalties.
- §332. Partnership Associations, Limited, Law.—Section Relating to Associations Existing Prior to Amendment of 1903.
- §333. Statute of Limitations.
- §334. Partnership Associations, Limited, Law.—Section Relating to Amendments.
- §335. Amendment of Articles of Association.
- §336. Partnership Associations, Limited, Law.—Section Relating to Reorganizations Prior to July 1, 1905.
- §337. Status of Reorganized Companies.

§284. Title.

“An Act authorizing the formation of partnership associations, in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances.”

§285. Constitutionality.

The Act has been held constitutional in its original entirety in Pennsylvania.—*Cox v. Watts*, 157 Pa. 93; *Lauder v. Logan*, 123 Pa. 34; *Maloney v. Bruce*, 94 Pa. 249. As to such of its provisions as have been called into question in Michigan, the Act has been sustained.—*Rouse, Hazard & Co. v. Donovan*, 104 Mich. 234, 27 L. R. A. 577.

§286. Partnership Associations, Limited, Law.—Sections Relating to Formation.

Section 1. When any three or more persons may desire to form a partnership association, for the purpose of conducting any lawful business or occupation within the United States or elsewhere, whose principal office or place of business shall be established and maintained within this State, by subscribing and contributing capital thereto, which capital shall alone be liable for the debts of such association, it shall and may be law-

ful for such persons to sign and acknowledge, before some officer competent to take acknowledgment of deeds, a statement in writing, or articles of association, in which shall be set forth the full names of such persons, and the amount of capital of said association subscribed for by each; the total amount of capital, and when and how to be paid; Provided, however, that the amount of capital stock subscribed shall not be less than fifty per cent of the authorized capital stock and the amount of capital stock paid in at the time of executing the articles of association shall not be less than ten per cent of the authorized capital. Said articles of association shall also state the character of the business to be conducted, and the location of the same, whether or not the capital subscribed shall be subject to the restrictive provisions of section four of this act, and unless the articles of association expressly declare that the capital subscribed shall not be subject to the provisions of said section four such capital shall be subject to the provisions of said section four so far as the same prohibits the members from transferring their interests and the transferee from becoming a member without the consent of the other members; the name of the association, with the word "limited" added thereto as part of the same; the contemplated duration of said association, which shall not in any case exceed twenty years; and the names of the officers of said association selected in conformity with the provisions of this act. Contributions to the capital stock may be in real or personal estate, at a valuation to be approved by all the members subscribing to the capital of such association; but where property has been contributed as part of the capital, a schedule containing the names of the parties so contributing with a description and valuation of the property so contributed, shall be inserted in such statement or articles; and any amendment of said statement or articles shall be made only in like manner; which said statement and amendments shall be recorded in the office of the Secretary of State of this State and in the office of clerk of the county in which such association has its principal office, at the expense of the association; and until said statement or articles are so recorded the same shall not be deemed valid or operative nor authorize the association to commence or conduct business thereunder. The Secretary of State and the county clerk, in whose office such articles of association shall be recorded, shall each certify upon every such article of association recorded by him, the time when it was received with a reference to the book

and page where the same was recorded, and the record or transcript of the record, certified by the Secretary of State, of this State, and under the seal thereof, shall be received in all the courts of this State as prima facie evidence of the due formation, existence and capacity of such association in any suit or proceedings brought by or against the same.

§287. Organizers.

These associations are governed by the general principles of corporation law.—Sec. 283, ante. Hence, the “three or more persons who become organizers must be natural persons capable of contracting.—Sec. 44, ante. No residential qualification is required.

§288. Purpose.

“The purpose of conducting any lawful business or occupation” embraces the widest field accorded to any statutory organizations under the laws of this state. There would seem to be no reason why a railway company (without right of eminent domain), a telephone or telephone company (without rights in streets and highways, except as acquired by special grant or purchase) or a trust company (without power to act as executor, administrator or guardian), may not be formed under this law. Such companies have been formed under this act in Michigan.—Sec. 449, 450, 442, post. In general, however, it is obviously best to incorporate under the act specially provided for the proposed purpose.

Sometimes the “limited act” is found useful in the formation of a primary company, pending the accumulation of property, and funds for an ultimate enterprise. Such tentative association holds the invested property and defines the rights of the original adventurers while they are working out the problem incident to the development of their undertaking. It is a “promoters’ company.” There being no fixed minimum of capital stock required, such organizations may be formed with slight investment.

The act has been found a useful vehicle for the organization of construction companies.—*Emery v. Kalamazoo & Hastings Construction Co., Limited*, 132 Mich. 560; see Sec. 227, post. It is useful, too, in all instances where other acts are found inadequate or inapplicable to the particular purposes sought to be accomplished. For example, suppose that the projectors of a proposed manufacturing company are promised sufficient capital for their project, provided they will make their offered shares fully participating, ten per cent, cumulative, preferred stock, retireable after three years. If it is deemed desirable to accept the offer upon these terms, the parties in interest will seek means of compliance. At the outset they will discover that the consolidated corporation act, while providing for issuance of cumulative, retireable, preferred stock, limits the preferential dividend to eight per cent, and, as construed (Sec. 274 ante), inhibits participation of preferred shares in dividends beyond that amount. Under such circumstances, the limited act

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presents a solution. Preferred stock being a mere matter of contract, it may be created by by-law (Cook's Corp., Sec. 268), provided the by-law is not inconsistent with the charter. While ten per cent and full participation advantages would be inconsistent with the provisions of the consolidated corporation law, and hence could not be provided by either the articles or the by-laws of a company formed under that act, the partnership association, limited, act, presents no such obstacle. The by-laws of limited companies may provide, at the time of organization (or afterwards, by unanimous consent) for preferred stock upon such terms as may be desired. There is no doubt that preferred stock thus created is lawful.—Lockhart v. Van Alstyne, 31 Mich. 76; Cook's Corp., Sec. 268.

While the field of selection accorded to limited companies is broad, the object selected must be single—*one* business, including its natural and convenient incidents.

The act is applicable to gainful pursuits only. Associations not for profit are now constrained to organize under a different law.—See Act 163 Pub. Acts 1905, p. 228.

The word "occupation" adds nothing to the breadth of the act. Any gainful occupation is "business," and no other kind of occupations may be pursued by such associations. The word came to us from Pennsylvania (Sec. 282 ante) and, like the vermiform appendix, is a useless relic of a by-gone organism. It is to be remembered that the Pennsylvania statute originated out of slightly modified common law partnerships, and, at the time of its adoption in Michigan, had been undergoing evolution during a period of about forty years. The origin of the act accounts for its peculiarities.

§289. Principal Office.

A partnership association, limited, may carry on business anywhere, but must maintain its principal office within this State. The State alone can take advantage of non-compliance with this requirement.—Staver & Abbott Mfg. Co. v. Blake, 111 Mich. 282-288.

290. Capital Alone Liable for Debts.

This is, of course, one of the vital provisions of the act. The capital stock of such an association is eminently a trust fund for creditors.—Rouse, Hazard & Co. v. Circuit Judge, 104 Mich. 234; Wood v. Sloman, 150 Mich. 177. Unpaid subscriptions are assets for the payment of association debts, and may be enforced by execution issued directly against the indebted members at the instance of a judgment creditor—Rouse, Hazard & Co. v. Circuit Judge, ante; or at the instance of a receiver—Rouse, Hazard & Co. v. Cycle Co., 111 Mich. 251-260; or of a trustee in bankruptcy.—Wood v. Sloman, 150 Mich. 177-194.

The constitutional liability of stockholders for labor debts applies to members of these companies.—Mich. Const. 1908, Art. XII, Sec. 2 and 4, and Beecher's Notes. But the "limited" act contains no provision for its enforcement. Labor debts in the hands of an assignee may probably be

enforced against stockholders under the provisions of C. L. 1897, Sec. 8534 *et seq.*, but in the hands of the laborer himself such enforcement could be had only in equity.—Peck v. Miller, 39 Mich. 594-597. Where the labor is performed upon construction or improvements, the mechanics' lien law affords a remedy.—C. L. 1897, Sec. 10710, *et seq.*

§291. Execution of Articles.

These quasi-corporations, like actual corporations, may gain a *de facto* existence, and, having gained it, the State alone can object to informalities in their organization.—Staver & Abbott Mfg. Co. v. Blake, 111 Mich. 282. When the articles of association have been duly executed in good faith, *de facto* existence as a body corporate instantly begins. *De jure* organization cannot arise until the articles have been duly recorded. Until the articles of association have been acknowledged, the statutory entity cannot be said to have come into existence.—Carmody v. Powers, 60 Mich. 26-30; Doyle v. Mizner, 42 Mich. 332.

In Pennsylvania, as we have seen, *de facto* organization of these associations is not recognized. Any defect in formation leaves the organizers liable as partners.—Ante Sec. 282, note. In Michigan, this Pennsylvania doctrine is expressly repudiated.—Staver & Abbot Mnfg. Co. v. Blake, 111 Mich. 282-289.

§292. Articles of Association.

Until 1903, the words "articles of association" did not appear in the act, but the "statement in writing" required by the original act was construed to mean such articles.

Full Names.—The meaning of the expression "full names" of the organizers has been passed upon by the Supreme Court of Pennsylvania in a case where the "statement in writing" had been signed by the use of initials and surname, without giving the Christian and middle names in full. Upon this point, Justice Mitchell said: "We are to inquire what is meant by the full names of members. * * * The object aimed at was the identification of the person, and the requirement of his full name had nothing further in view. A man's name is the designation by which he is distinctively known in the community. * * * The full name, therefore, is no more than the whole of such title, as it is used by himself and his neighbors for such purpose. To construe the statute to require the literal and absolute following of the entire list of names which a person may have had bestowed upon him, would be giving it not only a very narrow and technical construction, which serves no purpose of the act, but even one which might tend to defeat its real intent. A statement signed 'Stephen Grover Cleveland' would not create certainty, but doubt, as to its author."—Laffin & Rand Powder Co. v. Steytler, 146 Pa. 434, 14 L. R. A. 690-695.

§293. Capital Subscribed.

The articles of association, when signed, constitute a subscription contract between their signers and the association.—Ante Sec. 36. The sub-

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scribers become members of the association thereby.—Ante Sec. 80. And their interest is assignable.—Ante Sec. 80. But whether or not the assignee of such interest thereby becomes a member of the association depends upon considerations which do not arise in relation to ordinary corporations.—Post Sec. 296.

The authorized capital of a partnership association limited may be fixed at any amount agreed upon among its organizers. Until the amendment of 1903, the statute required no specific proportion of the capital to be subscribed or paid in. This apparent leniency was really less liberal than the requirement of the present law, for, in the absence of statutory permission that less may be subscribed, it is held that *de jure* organization is impossible until subscriptions to the entire authorized capital have been obtained. Ante Sec. 33.

Capital may be paid up in cash, or in notes immediately convertible into cash.—Rouse, Hazard & Co. v. Detroit Cycle Co., 111 Mich. 251; Cook's Corp., Sec. 20—or in real or personal estate. Subscriptions beyond the ten per cent of the authorized capital required to be paid in at the time of organization may be made payable upon call of the board of managers.—Cook's Corp., Sec. 109.

Shares.—The articles should state the number of shares into which the authorized capital stock is divided, and the par value of each share, which may be fixed *at any amount*—preferably \$10 or \$100. The statute does not require such statement, but good practice demands it.

§294. Character of Business.

The "character of the business to be conducted" refers to the intents designated as "purpose or purposes" in ordinary corporation enabling acts. The inclusive method of statement recommended under the general corporation law is applicable here.—Ante Sec. 29. It is good practice, after describing the business, to add a clause to the effect that the business is to be carried on "in the State of Michigan and elsewhere."—Stradley v. Cargill Elevator Co., 135 Mich. 367-376.

§295. Location.

"The location of the same" undoubtedly refers to the *situs* of the principal office or place of business (as distinguished from the mill, factory, warehouse or other place where operations are carried on) which must be maintained within this State.

§296. Restrictive Provisions Concerning Transferees.

Reference to section four of the act discloses that one of three courses is open to the organizers:

(a) They may, by mere silence, cause the transferee of shares, however acquired, to gain no rights of membership as to such shares, until he shall have been "elected thereto by a vote of a majority of members in number and value of their interest."

(b) They may, by provision in the articles, permit the membership rights and liabilities of a deceased member to be transferred to, and assumed by, some person to be selected, at pleasure, by the representative of such deceased member's estate.

(c) They may expressly declare in the articles that the capital subscribed shall not be subject to any of the restrictive provisions of section four of the act.

For a statement of the purpose of the restrictive provisions, see Sec. 311, *post*.

§297. Name.

The word "limited" must be the *last word* (Act. Sec. 3) of the association name. This requirement evidently grew out of the fact that, originally, the use of the word "company" in connection with the name of a limited partnership was prohibited. In Pennsylvania, prior to 1868, there was nothing in the firm name of such organizations to distinguish them from other copartnerships. As a result persons who were in ignorance of the public records were misled. It was to remedy this evil that the Pennsylvania legislature in the act of 1874 (the act borrowed by Michigan in 1877), required the use of the word "limited" as a distinguishing mark. It is a protection both to third parties and to members. Indeed there are instances where this peculiarity of name alone might confer immunities against individual liabilities that would attach to stockholders of an ordinary corporation. For example, Harrison and Company, a common law partnership, may reorganize under the same name as a full-fledged corporation. As to those who have dealt with the concern as a partnership, the members, in subsequent dealings, remain liable as partners, in the absence of actual or constructive notice of the change of status.—*Edwards v. Wheeler's Estate*, 130 Mich. 219; *Tousignant v. Iron Co.*, 96 Mich. 87. But suppose Harrison & Company had reorganized under the limited partnership association act as Harrison & Company, Limited. The name itself would operate as notice of the change. As was stated by Justice Grant, in *Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282-286: "The very name of the association implied a warning to plaintiff that it was not dealing with the members or stockholders of this association in their individual capacity, but in their associate capacity, with their liability limited."

§298. Duration.

The duration of a partnership association cannot exceed twenty years. If a shorter time is originally fixed, it may be extended by amendment of the articles, but not to exceed twenty years in all from the date of original organization.—*Ovid Elevator Co. v. Secretary of State*, 90 Mich. 466-469. Amendments made by stockholders cannot override legislation.

The State Constitution (Const. 1850, Art. XV, Sec. 10, as amended in 1889; Const. 1908, Art. XII, Sec. 3) provides that the legislature may enact statutes, authorizing corporations (and this term, as used in the constitution,

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includes "all associations") to extend their corporate life for one or more periods not exceeding thirty years each. From time to time the legislature has acted upon this constitutional authority, the last statute being Act 328 Pub. Acts 1905, p. 506. Nowhere else is there any authority for the extension of the duration of these associations. Is such authority conferred by this statute? If at all, it must be by implication. Extension of corporate life is really a grant of power to be a body corporate during a further term of years. "No corporation can exist, except by force of express law."—*Schuetzen Bund v. Agitations Verein*, 44 Mich. 313-315. May such an important grant rest upon an implication? It would seem not. At all events, there is nothing in the act of 1905 to warrant the conclusion that the legislature intended it to extend to partnership associations. No public interest would be served by such extension. The act contemplates extensions running thirty years, while twenty years is the allotted life of such associations. Moreover, it contemplates the execution of new articles by a *president* and secretary. A partnership association has no president. Clearly the legislature did not have these associations in mind when it passed Act 328 of 1905. It follows that, as our statutes stand today, the duration of a partnership association, limited, cannot be extended beyond twenty years from the date of organization.

In this connection another question forces itself upon our attention. Does the general corporation statute (C. L. 1897, Sec. 8534) providing, that a dissolved corporation shall have three years after dissolution for the purpose of prosecuting and defending suits, and gradually closing up its business—but not for the purpose of continuing its principle business—apply to partnership associations? The better opinion seems to be that it does not.

§299. Officers.

Since the names of the officers of the association must be stated in the articles, it is necessary that the first meeting of the stockholders shall be held prior to execution of the constating instrument. This putting of "the cart before the horse," to use a homely phrase, is, perhaps, typical of the hardy Pennsylvania farmers who enacted the original law. A complete excuse is found, however, in the fact that they were simply authorizing a new kind of partnership.

§300. Contributions.

Subscriptions may be paid by transferring to the association, at a unanimously approved valuation, such property "as shall be available to aid the business and pay creditors."—*Vanhorne v. Corcoran*, 127 Pa. 255, 4 L. R. A. 386-388. As to the character of the property which may be contributed, Chief Justice Paxson, in the case last cited, stated "It is to be noticed that the act gives a wide latitude as to the kind of property that may be contributed as capital. At the same time it is very evident that it contemplates a real, actual capital in cash, or in property available for

the business of the company and the payment of its debts. It was never intended that the property contributed as capital should be moonshine, wild lands or water-lots. If the business be merchandising, a stock of goods and the storehouse in which they are contained would be legitimate; if the business be mining, a mine, with its machinery and improvements, would be appropriate; and if manufacturing, the factory building, with its machinery and the stock manufactured and unmanufactured, would be in the direct line of its business, and therefore a proper and available contribution to capital."

§301. Valuation.

"Contributions to capital stock may be in real or personal estate, *at a valuation to be approved by all the members* subscribing to the capital of such association." In Pennsylvania this language is thus construed: "By the plain terms of the Act, the valuation is in the discretion of the parties, and (assuming, of course, good faith) may be sanguine or cautious."—*Laffin & Rand Powder Co. v. Steytler*, 146 Pa. 434, 14 L. R. A. 690; *Rehfuss v. Moore*, 134 Pa. 462, 7 L. R. A. 663; *Cock v. Bailey*, 146 Pa. 328. The case last cited holds, in substance, that there is no limit upon the valuation which may be adopted. The fact that it is agreed upon is made all controlling.

Is this the rule in Michigan? Certainly not unqualifiedly. *Wood v. Sloman*, 150 Mich. 177, is the only decision of our highest court, thus far, upon this point. The majority opinion in that case holds, that where the sole purpose of fixing the value is to produce fictitiously paid up stock for resale at less than par, the valuation is subject to review.

This is a definite departure from the Pennsylvania doctrine, and clearly indicates that, in the construction of this statute, in this particular, as in others, the Supreme Court of Michigan respects, but declines to follow, the Pennsylvania decisions. Having declared these associations governed by the principles of corporation law,—*Rouse, Hazard & Co. v. Detroit Cycle Co.*, 111 Mich. 251—and having announced that the capital stock of a private corporation is a trust fund for payment of present and future creditors—*Clark v. E. C. Clark Machine Co.*, 151 Mich. 416-423—there is reason to believe that organizers under this statute will be found individually liable in all cases where gross and intentional, or reckless, overvaluation have worked an injury to creditors. It follows, that the safe course in the formation of such associations is to conform to the rules of valuation applicable to corporations.—Ante Sec. 39. The fair and reasonable exercise of an honest discretion can harm no one, and may, as was shown in the case of *Graves v. Brooks*, 117 Mich. 424, prove to be a most reliable safeguard.

§302. Schedule.

"A vague or general lumping description is not sufficient."—*Laffin & Rand Powder Co. v. Steytler*, 146 Pa. 434, 14 L. R. A. 690; *Maloney v. Bruce*, 94 Pa. 249; *Vanhome v. Corcoran*, 127 Pa. 255, 4 L. R. A. 386; *Wood v. Sloman*, 150 Mich. 177. "It is not intended, however, nor would

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it be practical in many cases where an existing business is the basis of the new firm, to require minute specification of details that may change from day to day. *Certainty to a fair business intent is the safe, practical criterion.*—Lafin & Rand Powder Co. v. Steytler, ante; Rehfuß v. Moore, 134 Pa. 462, 7 L. R. A. 663. A description which would enable a creditor to identify the property, or a sheriff to levy upon it, is sufficient.—Rehfuß v. Moore, ante.

Distinct and independent items should be valued separately. Different kinds of property, when most valuable in combination, should be described separately, but may be valued in a single lump sum.—Rehfuß v. Moore, Id.

303. Recording Articles.

The provision that the articles shall not be deemed valid until recorded is for the benefit of the State. Both the association and those who deal with it as such are precluded from denying the validity of acts performed after organization and *before* the articles of association have been recorded.—Whitney v. Wyman, 101 U. S. 392, 25 L. ed. 1050-1052; Staver & Abbott Mfg. Co. v. Blake, 111 Mich. 282-288.

§304. Partnership Associations, Limited, Law.—Section Relating to Executions.

Section 2. The members of any such partnership association shall not be liable under any judgment, decree, or order which shall be obtained against such association, or for any debt or engagement of such company, further or otherwise than is hereinafter provided, that is to say: If any execution or other process in the nature of execution, either at law or in equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient thereof whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any of the members to the extent of the portions of their subscriptions respectively in the capital of the association not then paid up;"

"Provided always, That no such execution shall issue against any member, except upon an order of court or of a judge of the court in which the action, suit, or other proceeding shall have been brought or instituted; and the said court or judge may compel the production of the books of the association, showing the names of the members thereof, and the amount of capital remaining to be paid upon their respective subscriptions, and from them or other sources of information, ascertain the truth in regard thereto, and may order execution to issue accordingly; and the said association shall be and it is hereby required to keep a subscription list book for that purpose, and the same

shall be open to inspection by the creditors and members of the association, at all reasonable times: Provided, That nothing herein contained shall be construed to exempt the members of such partnership association from individual liability for all labor performed for the association.

§305. Constitutionality of Proceeding.

That the proceeding authorized by Section 2 of the act is not in conflict with the fourteenth amendment to the Federal Constitution, providing that no person shall be deprived of life, liberty or property without due process of law, was expressly decided in *Rouse, Hazard & Co. v. Circuit Judge*, 104 Mich. 234. In that case Justice Grant said: "By their own voluntary act in organizing they (the members) have read the statute into their articles of association, and have solemnly agreed with their creditors that execution may issue against their unpaid subscriptions. * * * The court has jurisdiction and is clothed with all the machinery necessary to frame the issue and afford a trial with all the incidents of a judicial proceeding * * * The proceedings taken by the relator were such as are contemplated by the statute and constitute due process of law."

§306. Outline of Procedure.

The following steps are indicated for the enforcement of subscription liability by a judgment creditor under the right conferred by section 2 of the act:

- (a) Judgement against the association;
- (b) Execution issued and returned unsatisfied;
- (c) Motion for an order requiring production in court of the books of the association, showing the names of the members, and the amount of capital remaining to be paid upon their respective subscriptions, and to have the amount thereof ascertained, and to have execution therefor.

This motion should be founded upon the files and records in the case, and should be supported by an affidavit setting forth the articles of association and all material facts.

- (d) A copy of the motion and affidavit should be served upon the association and upon each member against whom relief is sought.

- (e) If defendants appear and answer, plaintiff may move to have an issue framed and ordered tried. The issue may be in the following form:

In what amount, if any, are A, B, E, F, and X, or each or any of them, indebted to said D. Co., Limited, on account of any unpaid subscriptions to the capital of said company?

- (f) Trial may be had, before the court or a jury, in the same manner as in ordinary law cases.

- (g) If the plaintiff prevails, the court may order execution against each of the defendants for the amount of their respective subscription indebtedness as determined by the jury, or for so much thereof as may be necessary to satisfy the plaintiff's judgment with costs.

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See *Rouse, Hazard & Co. v. Detroit Cycle Co.*, 111 Mich. 251; *Rouse, Hazard & Co. v. Circuit Judge*, 104 Mich. 234.

§307. Partnership Associations, Limited, Law.—Section Relating to Name.

Section 3. The word "limited" shall be the last word of the name of every partnership association formed under the provisions of this act; and every such association shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the association is carried on, in a conspicuous position, in letters easily legible, and shall have its full name mentioned in legible characters in all notices, advertisements, and other official publications of such association, and in all bills of exchange, promissory notes, checks, orders for money, bills of lading, invoices, receipts, letters, and other writings used in the transaction of the business of the partnership association: Provided, That the omission of the word 'limited' in the use of the name of the partnership association shall render each and every member of such partnership liable for any indebtedness, damage, or liability arising therefrom.

§308. Use of the Word "Limited."

No liability arises from omission to use the word "limited" in instruments running to the association.—*Shaw, Kendall & Co. v. Brown*, 128 Mich. 573. No liability arises for omission to use the word "limited" in *any* instrument, unless it can be shown that some injury has arisen as a result of the omission.—*Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282-290. The purpose of the statute is, that when, through failure to use this distinguishing mark of limited liability, innocent third parties are led to suppose themselves to be dealing with a firm whose members are individually liable as partners, such third parties shall be protected in their belief. When the liability exists, assumpsit lies to enforce it.—See *Staver & Abbott Co. v. Blake*, ante.

§309. Partnership Associations, Limited, Law.—Transfers and Membership.

Section 4. Interest in said association shall be personal estate, and may be transferred under such rules and regulations as the association may prescribe.

But no transferee of any interest, or the representatives of any decedents, or of any insolvent shall be entitled thereafter to any participation in the subsequent business of said association.

unless he or she be elected thereto by a vote of a majority of the members in number and value of their interests.

And any change of ownership, whether by sale, death, bankruptcy, or otherwise, which shall not be followed by election to the association, shall entitle the owner only to his interest in the association at a price and upon terms to be mutually agreed upon, and in default of such agreement the price and terms shall be fixed by an appraiser appointed by the circuit court of the county where such association has its principal office, subject to the approval of said court.

Provided, that it may be stipulated and agreed in the statement in writing by which said association is organized, or by amendment filed thereafter, that on the death of any member his interest, if the representatives of his estate so elect, shall continue in the association during the continuance thereof and that the representatives of his estate may select some person who shall thereupon become a member of such association in place of such deceased member, with all his rights, privileges and responsibilities. Provided, however, that nothing herein contained shall affect the right of members to transfer their interest in associations heretofore organized under the provisions of act one hundred and ninety-two of the public acts of eighteen hundred seventy-seven, as amended.

§310. Transfer of Shares.

The general rules of law governing transfers of stock in ordinary corporations apply to these associations. A transfer, by endorsement, in full or in blank, completed by delivery, is valid as between the parties, whether registered or unregistered. Such a transfer is sufficient for the purpose of completing a sale or perfecting a pledge. But whether or not the vendee gains rights of membership by transfer, is dependent upon other considerations, viz.:

(a) If the association was formed prior to June 18, 1903, the provisions of C. L. 1897, Sec. 6082 control, and the transferee takes all rights of membership, precisely as though the association were an ordinary corporation.

(b) If the association was formed after the amendment of 1903 went into effect, but under articles of association excluding the operation of section 4 of the amended act "so far as the same prohibits the members from transferring their interests, etc.," (as the articles may under authority of section 1 of the act) the transferee takes complete rights of membership, as in an ordinary corporation.

(c) If the articles of association contain no provision excluding the operation of section 4 of the act, the transferee acquires only a right to be

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paid in cash the value of his interest so obtained, unless he shall be elected to membership. Under such circumstances, transfer unaccompanied by election to membership confers no voting rights, nor right to dividends.

That the transferee was already a member, makes no difference. He must be elected to membership as to the newly acquired shares, or he cannot vote them.—*Carter v. Producers' Oil Co., Ltd.*, 182 Pa. 551, 39 L. R. A. 100. Transfer may be made upon the books, but that formality does not change the transferee's status. Until election, he has no right to vote or receive dividends upon the purchased shares.—*Id.*

§311. Purpose of Restriction Upon Membership.

The operation of the provision is well illustrated by the facts in *Carter v. Producers' Oil Co.* ante. The defendant company was a competitor of the Standard Oil Company, in which plaintiff Carter was interested. For the purpose of changing the competitive policy of defendant, Carter acquired 29,875 shares, which, added to 300 shares owned by him as a member, gave him a clear majority of all the shares of the company. He was prevented from voting the newly acquired shares by force of a rule of the association, sustained by statutory authority, making election to membership a necessary pre-requisite. He was held to have no voting rights as to the 29,875 shares upon which he had not been so elected. Thus Carter's purpose was unexpectedly defeated—a desirable result from the standpoint of the minority, to whom control by the Standard Oil interests presumably meant disaster.

The advantage of restricted transfer is stability of membership. The original adventurers proceed with associates of their own choice. Control cannot be bought up by stealth to be exercised at pleasure. Would-be intruders may be excluded if unwelcome.

When stock has been transferred subject to statutory restriction, it is optional with the members to elect the transferee to membership, or to cause the association to pay him the value of his newly acquired shares. He is entitled to have the one course or the other adopted within a reasonable time.

In case membership is denied and a valuation cannot be agreed upon between the association and the transferee, either party may invoke the aid of the circuit court to that end. While the statute indicates no procedure, it would seem, by analogy, that a bill in chancery praying valuations of the shares and an accounting would be a proper remedy.

§312. Shares of Decedents.

The associative articles may provide that the legal representatives of a deceased member may appoint a successor, who shall have all of the deceased member's rights, privileges and responsibilities. Where the articles so provide, the representatives of a deceased member have, in effect, the right of unrestricted transfer to *one person*. They may sell the decedent's shares to a single transferee and appoint him to membership.

**§313. Partnership Associations, Limited, Law.—Section
Relating to By-Laws, Meetings and Management.**

Section 5. "There shall be at least one meeting of the members of the association in each year, written notice of which shall be duly served on each member of the association ten days prior to said meeting, at one of which there shall be elected not less than three ~~nor more than five~~ managers of said association one of whom shall be chairman, one the treasurer, and one the secretary, who shall hold their respective offices for one year and until their successors are duly installed.

And no debt shall be contracted nor liability incurred for said association except by one or more of said managers, and no liability for an amount exceeding five hundred dollars, except against the person incurring it, shall bind the said association unless reduced to writing and signed by at least two managers, except in case of associations for the purpose of buying and selling merchandise a majority of the interest in such association may select one of the managers each year to purchase merchandise required in the business of the association, make contracts, and sign notes for the same: Provided, such power given in writing fully setting forth the extent to which such manager may make purchases and contract debt for the association, which shall be signed by a majority of the members in number and value of their interest, and such power of purchasing and contracting debts shall be strictly limited to the ordinary business of the association: And also provided, that at the time of the formation of such association, rules, not inconsistent with the provisions of this act, may be adopted for the management thereof, which shall only be amended by the consent in writing of three-fourths in number and value of interest."

§314. By-Laws.

It is impossible to proceed far in a consideration of the terms of this act before discovering the important part to be played by the rules of government which the members are authorized to enact at the time of organization. Without such rules, or with such rules inadequately framed, management of the company would be embarrassed by uncertainties and grave difficulties.

In *Carter v. Producers' Oil Co.*, 182 Pa. 551, 39 L. R. A. 100, counsel insisted that by-laws and "rules" are very different things; that by-laws control corporate action, while rules are restricted to control of those who deal with the company. The court declined to recognize the distinction. In Michigan there is no doubt that authority to make "rules," as that term

is used in this statute, is authority to make by-laws.—Stradley v. Cargill Elevator Co., 135 Mich. 367-375.

Among the provisions to be embraced in the by-laws of these associations, the following may be noted:

(a) That each share shall entitle the *member* holding the same to one vote upon all subjects coming before any meeting of the stockholders;

(b) That *members* may vote in person or by proxy;

(c) That notice of all meetings may be served by mailing the same, with postage prepaid, to the last address of the member appearing upon the books of the company;

(d) That stockholders' meetings shall be held at a certain time and place;

(e) That there shall be a certain number of managers, a majority of whom shall constitute a quorum;

(f) That there shall be a vice-chairman selected from among the managers;

(g) That the chairman, vice-chairman, secretary and treasurer shall be elected in a certain manner. Usually they are chosen by the managers, but the by-law may provide that they shall be elected by the stockholders from among the managers.

(h) That certain officers shall have power to call all meetings;

(i) That special meetings both of stockholders, and of directors, may be called by the giving of certain notice.

(j) That the managers shall constitute a board having full power to direct, manage and control the property and business of the company.

(k) That the association shall have a lien upon the shares of each member to the amount of any and all indebtedness of such member due or owing to the association. Suitable provisions for the enforcement of such lien should be included. The statute is silent upon this important right, hence it should be fully declared in the by-laws.

These are provisions which should not be overlooked. The usual provisions of all well-drawn by-laws, except as inconsistent with the act, should also be embodied.—See Sec. 57 ante, and 452 post.

It has been seriously questioned whether by-laws of such associations may lawfully provide for voting by proxy.—Stradley v. Cargill Elevator Co. ante. Such a rule is certainly not inconsistent with the terms of the act, and it is believed to be clearly supported by the general authority to make by-laws there conferred. By-laws permitting voting by proxy have the sanction of the general corporation laws of the state (C. L. 1897, Sec. 8528), as well as of usage. There would seem to be no sound reason why such by-laws should not be sustained.

§315. Managers.

Originally the managers were not regarded as a distinct board—as a body to move by concerted action; but more recent legislation in this State so regards them. (See Sec. 317 and 334 post). Apart from certain peculiar-

ities, which we shall now proceed to discuss, boards of managers are equivalent to boards of directors.—*Stradley v. Cargill Elevator Co.*, 135 Mich. 367-376.

As was pointed out by Justice Hooker, in *Attorney General v. McVichie*, 138 Mich. 387-390, a *minority* of the managers may bind the association by acts and contracts. Up to \$500 one manager may bind the association. Beyond that sum, two may bind it. In merchandising companies, the members may authorize a single manager to make notes and contracts to any specified extent. It has even been held that knowledge of a long course of dealing during which a manager has been permitted, without protest, to repeatedly execute notes exceeding \$500, would warrant purchasers of such paper in assuming that proper authority had been given, and that they might become *bona fide* holders of such paper, notwithstanding that, upon its face, it appeared to exceed the statutory contractual authority of one manager acting alone.—*Armstrong et al. v. Stearns et al.*, 16 D. L. N. 288-290. (Decided May 26, 1909). In this case several notes exceeding \$500, executed by one manager without special authority were held valid in the hands of *bona fide* purchasers, under the circumstances above outlined.

Except through remedial legislation, there is no effective way in which the excessive powers conferred upon the managers by this law can be restricted. By-laws are unavailing against it. Restrictive clauses in the articles are unauthorized. The only redeeming feature of the situation is that the power seems to have been rarely abused. Ordinarily, and most properly, the managers proceed by way of meetings, and action is permitted to be governed by majority vote.

§316. Debts and Liabilities Exceeding \$500.

In *Citizens' Savings Bank v. Vaughn*, 115 Mich. 156, 159, it was held that a liability exceeding \$500, not contracted in writing by two or more managers, was unenforceable *in toto*. It is not merely voidable as to the excess, but is voidable as a whole. See also *Rhoades v. Malta Vita Pure Food Co.*, 149 Mich. 235-238; *Armstrong et al. v. Stearns et al.*, 16 D. L. N. 288 (May, 1909). But a debt exceeding \$500 upon an open account made up of items none of which amounts to \$500 may be contracted by one manager.—*Shaw, Kendall & Co. v. Brown*, 128 Mich. 573. It has been held in Pennsylvania that, where a partnership association accepts the benefits of a purchase made in disregard of the statute, it is estopped to urge the statute as a defense. *Yaryan Co. v. Glue Co.*, 180 Pa. 480-499.

§317. Cumulative Voting.

In 1909, the legislature of Michigan made another contribution to the law governing these associations. (Act 45 Pub. Acts 1909, p. 72.) The Supreme Court having held, in *Attorney General v. McVichie*, 138 Mich. 387, that the provisions of the original cumulative voting law (C. L. 1897, Sec. 8553) did not embrace partnership associations, limited, an opportunity for legislation was presented. Accordingly an act directly and exclusively applicable to these associations was framed and adopted in the following language:

The People of the State of Michigan enact: Section 1. In all elections for managers of partnership associations organized under the provisions of chapter one hundred sixty of the Compiled Laws of eighteen hundred ninety-seven and acts amendatory thereto, every member of such partnership association shall have the right to vote in person or by proxy the number of shares owned by him for as many persons as there may be managers to be elected, or to cumulate said shares and give one candidate as many votes as will equal the number of managers multiplied by the number of his shares of stock; or to distribute them on the same principle among as many candidates as he shall think fit. All such partnership associations shall elect their managers annually, and the entire number of managers shall be balloted for at one and the same time and not separately: Provided, That the by-laws of any such partnership association shall not be so amended as to reduce the number of managers of such partnership association, in case the votes of a sufficient number of shares are recorded against such proposed amendment, which, if cumulatively voted as herein provided, would elect one or more managers where the same number of shares, if cumulatively voted, would not be sufficient to elect the same number of managers of the reduced board of managers.

Measured by American standards, this legislation is wrong upon principle. When coupled with the powers vested in the managers of these associations by statute, it is violative of the maxim of majority rule. It seemed enough that a manager chosen by the preponderating stock interests might bind the credit of the association; but now we have the anomalous spectacle of a minority member of the board, himself the choice of a minority of the stockholders, clothed with power to bind the majority by his acts.

The cumulative voting law of 1909 applies to all partnership associations of this State, whether organized before or after the statute went into operation. As to subsequently formed companies, the law is valid. But as to pre-existing associations purely private in their nature, doubt of the constitutionality of this law is entertained. Assuredly the inequities of its operation cannot strongly commend it to the courts.—Attorney General v. McVichie, 138 Mich. 387. This much is certain, that the Looker case (Attorney General v. Looker, 111 Mich. 498, 179 U. S. 46, 45 L. ed. 79) does not predetermine the validity of this later legislation. The present statute is *distinguished by its vices*. The Looker case dealt with an act that conferred upon minority stockholders the power to elect an innocuous minority of the directorate. The mischief of the law of 1909 is, that, in operation, it enables the minority stockholders to set up within the company an inharmonious independent management whose acts and contracts shall be binding upon the majority.

It would be difficult to devise a statute better calculated, though by indirection, to undermine vested majority interests and to defeat the objects of the grant. As to purely private partnership associations that pre-existed the statute, it is believed that this amendatory legislation transcends the state's reserved right.—See *Attorney General v. Looker*, 111 Mich. 498, and cases there cited.

Should the reasons given be deemed insufficient to repel the operation of the cumulative voting law as to pre-existing associations, a final reason is offered. The legislature has provided by the terms of section 11 of the act (Sec. 326, post), "That no amendment, modification or repeal of this act shall affect anything duly done (or) right acquired * * * before such amendment, modification, or repeal comes into effect." The charter is a contract. By this clause the contracting parties have adopted a construction to be placed upon a provision of that contract—a construction of the contractual provision relating to the state's reserved right of amendment and repeal. They have agreed that lawful acts done and rights acquired prior to exercise of the reserved power shall not be disturbed. They have not attempted to restrict, but rather to explain, the constitutional provision. Where its operation was uncertain, they have, by an agreed construction, rendered it certain. In doing this they have strictly adhered to the spirit of the State's organic law. They have infringed upon no constitutional principle. If this be conceded, it follows that the construction so adopted will be sustained by the courts.—*Detroit City Railway v. Mills*, 85 Mich. 634-646; *Vincennes v. Citizens Gas Light Co.*, 16 L. R. A. 485. Given effect, section 11, above quoted, certainly denies the legislature power to impose upon existing associations the revolutionary change incident to a minority representation, amounting to minority rule.—See *Cook's Corp.* Sec. 501; see also Sec. 52 post.

§318. Partnership Associations, Limited, Law.—Section Relating to Dividends.

Section 6. The association may, from time to time divide the profits of its business in such manner and in such an amount as a majority of its managers may determine, which profits so divided shall not at the time diminish or impair the capital of the said association; and any one consenting to a dividend which shall diminish or impair the capital shall be liable to any person or persons interested or injured thereby to the amount of such diminution or impairment.

§319. Impairment of Capital by Payment of Dividends.

Section 6 of the act clearly contemplates that the managers shall act as a board, and by majority vote, in declaring dividends. It declares, too, a restriction against payment of dividends from capital stock—a restriction not dependent upon the statute for its existence.—*American Steel & Wire*

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Co. v. Eddy, 130 Mich. 266. The section then proceeds to provide a punishment for payment of unwarranted dividends, and here lies the sole constructive difficulty. "Any one consenting to a dividend which shall diminish or impair the capital shall be liable, etc." Who is meant by "any one"? Since no one else is mentioned in the section, it would seem that the legislature was speaking of managers. They are the persons who have power, and it is their duty, to ascertain whether or not a dividend is warranted. It is their assent that makes declaration of a dividend possible. Clearly, it is to them that the statutory responsibility should attach. The statute is to be construed as though it read, "Any one of the managers consenting, etc. . . . shall be liable."

Who may bring the action? The statute says, "Any person or persons interested or injured thereby." The word "interested" as here used is simply an inapt attempt to express the idea that the action may be brought by stockholders as well as by creditors. The statute is penal.—Thomp. Corp. Secs. 4293-4295—and hence will not be construed to render managers individually liable for unwarranted dividends declared and paid without negligence and in good faith. It is in addition to the equitable remedy which permits a judgment creditor to follow capital stock, distributed as dividends, into the hands of the stockholders.—American Steel & Wire Co. v. Eddy, 130 Mich. 266.

§320. Partnership Associations, Limited, Law.—Section Relating to Loans.

Section 7. It shall not be lawful for such association to loan its credit, its name, or its capital to any member of said association, and for such loan to any other person or association, the consent in writing of a majority in number and value of interest shall be requisite, and in no case shall the credit of the association be loaned except the regular business of the association is to be directly benefited thereby.

§321. Loans of Credit, Name or Capital.

A stockholder who has borrowed money from the association cannot defeat his obligation by urging that the transaction was illegal. He is estopped. *Butterworth & Lowe v. Kritzer Milling Co.*, 115 Mich. 1; *Carson City Savings Bank v. Elevator Co.*, 90 Mich. 550; *Fifth National Bank v. Pierce*, 117 Mich. 376; *Union National Bank v. Matthews*, 98 U. S. 621, 25 L. ed. 188-190.

The association itself cannot plead the illegality of its own act as a defense.—*Citizens Savings Bank v. Globe Brass Works*, 15 D. L. N. 849 (Nov. 1908); *Rehberg v. Tontine Surety Co.*, 131 Mich. 135; *Peterson v. People's Building, Loan & Savings Ass'n.*, 124 Mich. 573; *Clement, Bane & Co. v. Michigan Clothing Co.*, 110 Mich. 458.

A dissenting stockholder may have injunctive relief against proposed illegal action.—*Fletcher & Sons v. Circuit Judge*, 136 Mich. 511; *Detroit & Erin P. R. Co. v. Circuit Judge*, 109 Mich. 371. Corporate paper, issued in violation of this section would, nevertheless, be enforceable in the hands of a *bona fide* holder.—*Genesee County Savings Bank v. Michigan Barge Co.*, 52 Mich. 438-466; *Fletcher & Sons v. Circuit Judge*, 136 Mich. 511.

For a discussion of this whole subject, see Section 26, ante, and notes.

§322. Partnership Associations, Limited, Law.—Section Relating to Voluntary Dissolution.

Section 8. Such association may be dissolved:

First. Whenever the period fixed for the duration of the association expires;

Second, Whenever by vote of a majority in number and value of interest it shall be so determined, and notice of such winding up shall be given by publication in two newspapers published in the proper city, or county, at least four consecutive weeks; and, immediately upon the commencement of said advertising, said association shall cease to carry on its business, except so far as may be required for the beneficial winding up thereof.

Section 9. When any such partnership association shall be dissolved by the voluntary action thereof, its property shall be applied and distributed as follows:

First, To the payment of all debts for wages of labor;

Second, To the satisfaction of its other liabilities and indebtedness;

Third. After payment thereof, the same shall be distributed to and among the members thereof, in proportion to their respective interests, in the following manner:

Fourth. Three liquidating trustees shall be elected by the members of the association, who shall have full power and authority to wind up the concern, and distribute the net assets thereof among the members, under the direction of the circuit court of the proper county.

§323. Proceedings Upon Voluntary Dissolution.

At the outset it will be observed that subdivision "Fourth" of Section 9 of the act is out of the order of logical arrangement. It should be a part of subdivision "Second" of Section 8. Election of the liquidating trustees (who may, or may not, be members) is the final act of the stockholders. After these trustees have entered upon the performance of their trust, the stockholders and managers of the association have no further authority.—*Morris v. Imperial Cap Co.*, 135 Mich. 476.

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The notice of liquidation is published by and in the name of the liquidating trustees. They are virtually receivers. While a narrow interpretation of the language of the statute might lead to the conclusion that the aid of the court need not be invoked, except for the purpose of ordering distribution of net assets among members (and hence that, if there are no net assets, the aid of the court need not be asked at all) this view is not in accord with the better practice. As a matter of self-protection, the trustees should immediately petition the proper court of chancery, praying, among other things, an order restraining suits, confirming the appointment of the trustees, and empowering them to proceed, under direction of the court, to wind up the association's affairs.—*Morris v. Imperial Cap Co.*, 135 Mich. 476. As to this section of the act, see also *Emery v. Kalamazoo & Hastings Construction Co.*; 132 Mich. 560-571. The liquidating trustees are entitled to compensation.—*Jennings, Beal & Co. v. Case*, 157 Pa. 630.

§324. Partnership Associations, Limited, Law.—Section Relating to Conveyances, Suits and Service of Process.

Section 10. All real estate owned or purchased by any association, created under and by virtue of this act, shall be held and owned and conveyance thereof shall be made in the association name; said association shall sue and be sued in their association name; and when suit is brought against any such association, service of process and other papers in such suit prior to appearance therein, by defendant, shall be made upon the chairman, secretary or treasurer thereof: Provided, If no such officer reside in the county where the principal office or place of business of such association is located, or no such officer be found in such county within five days after the commencement of such suit, service of such process and papers may be made upon such association by service thereof upon any clerk, agent or attorney thereof in its office or place of business named in its articles of incorporation, which service shall be as complete and effective as if made upon each and every member of such association.

§325. Service of Process.

Inasmuch as the act itself very carefully provides for the service of process, instances in which service in any other manner might be desirable must necessarily be infrequent. Is any other manner of service authorized? Do the general statutes providing for service of process upon ordinary corporations apply to these associations? Probably not. There is certainly no authority for assuming that they do.

This suggests a very practical question. May suit against a domestic partnership association, limited, be commenced in Justice Court by attachment? We have seen (Sec. 104, ante) that suit against an ordinary domestic

corporation cannot be so commenced. We have also seen that these associations are not strictly corporations. (See 283, ante.) Does the distinction subject partnership associations to Justice Court attachment process? "The remedy by attachment is highly artificial and in this state is considered as 'special and extraordinary'? The statutory provisions relating to it have invariably been subjected to strict construction, and the rule is fairly established that unless the case is plainly within the terms expressed it cannot be considered as embraced."—*Van Norman v. Circuit Judge*, 45 Mich. 204-208. Partnership associations, limited, are at least quasi-corporations. They are, in this State, governed to a considerable extent by the law of private corporations.—*Rouse, Hazard & Co. v. Detroit Cycle Co.*, 111 Mich. 251; *Staver & Abbott Mfg. Co. v. Blake*, 111 Mich. 282; *Armstrong v. Stearns*, 16 D. L. N. 288 (May 1909). If they are not corporations, they are, at least, not distinctly anything else. It is believed that they are within the protection of the statute relating to Justice Court process, which provides, that, "The first process against a (domestic) corporation shall be a summons."—C. L. 1897, Sec. 754.

§326. Partnership Associations, Limited, Law.—Section Relating to Vested Rights.

Section 11. That no amendment, modification, or repeal of this act shall affect anything duly done, right acquired, liability incurred, or penalty, forfeiture, or other punishment incurred or to be incurred, in respect of any offense against the provisions of this act before such amendment, modification, or repeal comes into operation.

§327. Amendment, Modification or Repeal.

Section 11 above recited is open to two views. It may merely amount to an unnecessary declaration, that the legislature has no power to oust vested rights by amendment or repeal, or it may go further and amount to an agreed construction of the limitations upon that reserved right. It is, of course, conceded that the legislature is powerless to waive or suspend a constitutional provision.—*Milroy v. Spurr Mountain Iron Mining Co.*, 43 Mich. 231-238. Yet the legislature may provide the means and designate the manner in which such a provision is to be made effective.—*Id.* The legislature alone determines the advisability and scope of amendments and repeals. For this purpose it must construe the constitution, and the legislative construction is respected by the courts.—*Menton v. Cook*, 147 Mich. 540-543. When the legislature has agreed and acted upon a construction—when it has written that construction into a solemn contract—shall that action be held of no avail? Or shall it be given effect to the same extent as though the contract were between private individuals? These queries seem to admit of but one answer. Having agreed upon a construction violative of no constitutional principle, the legislature is bound by its agree-

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ment.—*Flint & F. P. R. Co. v. Woodhull*, 25 Mich. 99. If this be correct, it follows that section 11 of the act fixes a definite limit beyond which the legislature cannot go in amending or repealing the law relating to partnership associations.

§328. Partnership Associations, Limited, Law.—Section Relating to Franchise Fee.

Section 12. Every such partnership association organized after this act takes effect, shall at the time of recording its statement in writing, or articles of association, pay to the Secretary of State a franchise fee of one-half of one mill upon each dollar of its total authorized capital stock, and a proportionate fee upon every subsequent increase thereof; no statement in writing, or articles of association, shall be received by the Secretary of State for recording unless accompanied by the fee provided for in this act, and every partnership association heretofore organized which shall hereafter increase its authorized capital, shall pay a franchise fee of one-half of one mill upon each dollar of such increase of authorized capital, and a proportionate fee upon each subsequent increase thereof: Provided, The fee herein provided shall in no case be less than five dollars. All contracts made in this state after the first day of January, nineteen hundred and four by any partnership association organized after this act becomes operative, which has not first paid the franchise fee required to be paid by this act shall be wholly void. The franchise fee provided by this act shall be deemed and held to be specific taxes and shall be paid into the State treasury and shall be applied to the objects and purposes prescribed in section one, article fourteen of the Constitution of this State.

§329. Franchise Fee.

Prior to the amendments of 1903, no franchise fee was exacted from these associations. Many organizations having large capital were then formed, and are still operating, under this act.

The provision that contracts made prior to payment of the franchise fee shall be "*wholly void*" renders it highly impractical for such associations to attempt to transact business until such fee has been paid. While the corporation would probably be estopped to urge the invalidity of a contract made in violation of this provision, there is no doubt that the defect would prove fatal to an action brought by the corporation upon a contract thus prematurely made.—*Rough v. Breitung*, 117 Mich. 48-56.

§330. Partnership Associations, Limited, Law.—Section Relating to Annual Reports and Notice of Change of Status.

Section 13. Every partnership association heretofore or hereafter organized under this act shall annually, in the month of January or February, make duplicate reports for the fiscal year last ending, of such association, on suitable blanks to be furnished by the Secretary of State, as hereinafter provided. Such report shall state the amount of capital subscribed, and the amount thereof actually paid in, in cash, and the amount thereof paid in property, if any; the amount of capital invested in real and personal estate, and the present actual value of the same as near as may be estimated; the amount of debts of the association, and the amount of credits, and the present estimated value of the credits; the name and postoffice address of each member and the amount of capital held by each at the date of such report; the name and postoffice address of each officer and manager of the association and such other information as the Secretary of State may require. It shall be the duty of the Secretary of State in the month of December in each year, to mail to each such association suitable blanks on which shall be printed a copy of this section. Such reports shall be signed by a majority of the managers and verified by the oath of the secretary of the association, and deposited in the office of the Secretary of State within the said month of January or February.

The Secretary of State shall carefully examine such reports, and if upon such examination they shall be found to comply with all the requirements of this section, he shall file one of them in his office and shall forward the other by mail or express to the county clerk of the county in which the principal office, in this state, for the transaction of the business of said association is situated. And it shall be the duty of such county clerk, upon receipt of such report to immediately cause the same to be filed in his office. If any of the managers of any such association shall wilfully neglect or refuse to make and deposit the report required by this section, within the time herein specified, they shall each be liable for all the debts of such association contracted during the period of such neglect or refusal, and subject to a penalty of twenty-five dollars, and in addition thereto the sum of five dollars for each and every secular day after the first of March in each year during the pendency of such neglect or refusal, which penalty shall be for the use and benefit of the general fund of this State. The Secretary of State shall, dur-

ing the last week of June of each year, report to the Attorney General in writing, the name and post office address of each and every association which has failed to comply with the provisions of this section. And upon the receipt of such report, it shall be the duty of the Attorney General to institute proceedings in any court of competent jurisdiction, to collect said penalties, and all necessary expenses incurred by the Attorney General in such proceedings shall be audited by the Board of State Auditors, and paid from the general fund of the State.

And in case an association organized or doing business under the provisions of this act shall be dissolved by process of law, or whose term of existence shall terminate by limitation, or whose property and franchises shall be sold at mortgage sale, or at private sale, it shall be the duty of the last board of managers of such association, within thirty days thereafter, to give written notice of such change to the Secretary of State and the county clerk of the county where the principal office of such association is located, signed by a majority of such last board of managers, which said notice shall be recorded as amendments are required to be recorded. And in case of neglect to give such notice, they shall be subject to the same penalties provided in case of neglect to make annual reports, which said penalties shall be collected and applied in the same manner as in case of neglect in making annual reports. The neglect or refusal to file the reports required by this section to be filed, shall be deemed to be wilful when the report required is not filed within the time herein limited.

Whenever any association has neglected or refused to make and file its report within twenty days after the time limited in this section, the Secretary of State shall cause notice of that fact to be given by mail to such association, and to each last known officer and manager thereof, directed to their respective post office addresses. The certificate of the Secretary of State or his deputy, of the mailing of such notices, shall be prima facie evidence in all courts and places of that fact, and that such notices were duly received by said association. All actions and suits based on the neglect or refusal of the officers or managers of such association to make and file the reports required by this section, shall be commenced within two years next after such neglect or refusal has occurred, and not afterwards.

§331. Penalties.

The penalties for failure to file annual reports, and for failure to file notice of change of status, are identical. The penalty is imposed upon the defaulting managers only, and inures to the benefit of the State alone.

The statute is penal, and therefore cannot be extended by construction.—*People v. Crucible Steel Co.*, 151 Mich. 618-620; *Bank of Saginaw v. Pierson*, 112 Mich. 410-413; *Gennert v. Ives*, 102 Mich. 547; *Crosby v. Pere Marquette R. Co.*, 131 Mich. 288; *Van Buren v. Wylie*, 56 Mich. 501. It applies to *wilful* neglects or refusals (expressly so as to defaults in filing annual reports, and impliedly so as to defaults in filing notice of a change of status) and provides that the presumption of wilfulness shall arise from the fact of the default. The same presumption would arise without aid of the statute.—*Gennert v. Ives*, 102 Mich. 547; *Van Etten v. Eaton*, 19 Mich. 187; *Bank of Saginaw v. Pierson*, 112 Mich. 410-412. This presumption may be rebutted. Collection of the penalty may be defeated by proof establishing that the default was not wilful.—*Gennert v. Ives*, 102 Mich. 547-551. See also Sec. 200, ante.

§332. Partnership Associations, Limited, Law.—Section Relating to Association Existing Prior to Amendment of 1903.

Section 14. Every partnership association heretofore organized, is required to file a copy of its statement in writing or articles of association, verified by the oath of the secretary of the board of managers or certified by the register of deeds of the county in which said statement or articles were recorded, as a full and true copy of the same with its date of record together with all amendments to such statement or articles, if any have been made and recorded, in the office of the Secretary of State of this State on or before the first day of January, nineteen hundred and four. The officers and managers of every such partnership association failing to file such copy of its statement in writing or articles within the time herein prescribed, shall each be subject to a penalty of twenty-five dollars, and in addition thereto the sum of five dollars for each and every secular day after January first, nineteen hundred and four. Such penalty shall be for the same use, and shall be collected in the same manner, by the Attorney General as prescribed in section thirteen of this act: Provided that partnership associations already organized shall not be required to pay a franchise fee upon their recording articles of association under this act.

§333. Statute of Limitations.

Section 14 is now a matter of history, and is reproduced merely for the sake of completeness. As a matter of fact, many decadent associations

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never complied with its terms. Where companies were out of business, though not legally dissolved, the State generously refrained from enforcing the penalties provided. Such actions not having been begun within two years after January 1, 1904, the right of action has long since been barred by limitation.—See Sec. 330, ante.

§334. Partnership Associations, Limited, Law.—Section Relating to Amendments.

Section 15. Every association organized or existing under the provisions of this act may, at any annual meeting or any meeting duly called for that purpose, by a resolution adopted by a vote of two-thirds in value of interest of its capital stock, amend its articles of association in any manner not inconsistent with the provisions of this act, but such amendment shall not become operative until a copy of such resolution, signed by the chairman and secretary of the board of managers of such association, shall have been recorded as is provided herein for the recording of the original articles of association when such amendments shall have the same force and effect as though said amendments had been included in the original articles, and a record or copy of the record of such resolution certified as provided in section one for the certification of the original articles of association shall be received in all courts of this state as prima facie evidence of the things therein stated.

§335. Amendment of Articles of Association.

By section 15 of the act, adopted in 1903, the legislature conferred a beneficial power upon every partnership association. Until that time, amendments were required to be made in the same manner as the original articles.—C. L. 1897, Sec. 6079. This required unanimous assent of the members. Moreover, that assent was necessarily expressed by means of amended articles, signed and acknowledged by all of the members in person or by attorney. In associations having a numerous and widely scattered membership, the power of amendment was practically defeated by the difficulties attending its exercise.

Section 15 of the act provides a plain, simple procedure, which enables the making of all amendments not inconsistent with the terms of the enabling law. Under its provisions, the name, capital stock, par value of shares, location of business office, duration and even the purposes of the association may be changed.—*Meredith v. New Jersey Zinc & Iron Co.*, 59 N. J. Eq. 257, 44 Atlantic R. 55.

§336. Partnership Associations, Limited, Law.—Section Relating to Reorganizations Prior to July 1, 1905.

Section 16. Every partnership association, now existing, organized under act number one hundred ninety-one of the public

acts of eighteen hundred seventy-seven, as amended, being chapter one hundred and sixty of the Compiled Laws of eighteen hundred and ninety-seven, may at any time within two years from and after the first day of July in the year nineteen hundred and three reorganize under any act providing for the incorporation of companies for a purpose or purposes for which such association was organized: Provided, such reorganization is authorized and directed by a vote of two-thirds in interest of the members holding the capital stock of any such partnership association, at a regular meeting of the members of such association, or at a meeting called expressly for that purpose in accordance with the by-laws or statement in writing by which it was organized. The resolution or other action by which said vote is expressed shall be certified in duplicate by the executive officers of the association so reorganizing and attached to its articles of incorporation when the same are recorded; and in addition to said resolution or other action, the said officers shall certify the name of the association and the date upon which the same was organized under the statute now known as chapter one hundred sixty of the Compiled Laws of eighteen hundred ninety-seven and every such association so organized before this act becomes operative may reorganize as herein provided without paying the franchise fee provided in act number one hundred eighty-two of the public acts of eighteen hundred ninety-one; being section eight thousand five hundred seventy-four of the Compiled Laws of eighteen hundred ninety-seven: Provided, that the period for the existence of the corporation so organized shall be coincident with the period of existence remaining to the partnership association at the date of its reorganization as above provided:

This act is ordered to take immediate effect.

Approved June 18, 1903.

§337. Status of Reorganized Companies.

When, in 1903, the legislature introduced radical changes into the partnership associations, limited, law, section 16 of the act was inserted in a spirit of fairness to enable existing associations to reorganize under any other suitable act, without payment of a franchise fee. Numerous companies accepted the invitation and took up existence under one or another of the regular corporation enabling acts. This procedure gave rise to an interesting question, namely, Was the identity of the original association preserved in the company resulting from the reorganization? If so, simple compliance with the terms of the statute completed the transaction; but, if

otherwise, the property of the old company must be transferred to the new; elections must be held; by-laws must be adopted, and all of the formalities incident to setting up a distinct and separate corporation must be observed.

The question raised has not been settled by judicial decision in this jurisdiction. "The term 'reorganization' does not necessarily imply that a new corporation has been created. Nor, on the other hand, does it necessarily imply that an old corporation is merely continued. Its effect in any particular case must depend upon the intention of the parties and the terms of the statute under which it takes place."—*Marshall's Corp.*, p. 458.

The situation and intent of the parties must control. New articles were to be executed; a new name might be assumed; new powers might be gained; new purposes, not inconsistent with the old, might be claimed; duration alone was expressly limited. Above all, a true corporation was to result. The legislature has never regarded partnership associations as corporations. *Attorney General v. McVichie*, 138 Mich. 387. The language of this very section indicates that the distinction between such associations and corporations was present in the legislative mind. There is nothing in the section of sufficient force to support the conclusion, that the legislature's intent was to make these two, differing, artificial persons, identical. If they did not become identical, they remained separate. If separate, the result of the reorganization was a distinct company, to be brought under an independent internal government, and to be invested, by proper transfers, with the property of the abandoned association.

This much has been said because it is known that reorganizations—even where title to real estate was involved—were effected under this statutory permission without transfers of property, and in reliance upon an opposite interpretation of the law. If the view here expressed is correct, such reorganizations were—perhaps still are—imperfect and incomplete. In any event, observance of the omitted proceedings could have worked no harm.

No formalities were necessary for the protection of creditors.—*Chase v. Michigan Telephone Co.*, 121 Mich. 681-634; *Grenell v. Ferry*, 110 Mich. 262; *Grenell v. Detroit Gas Co.*, 112 Mich. 70; *Howell v. Lansing & Suburban Trac. Co.*, 146 Mich. 450—nor of stockholders.—*Kobogum v. Jackson Iron Co.*, 76 Mich. 498; *Sparrow v. E. Bement & Sons*, 142 Mich. 441.

DIVISION III
System of Foreign Corporation Jurisprudence

PART ONE
COMMENTARIES

Chapter I. The Admittance of Foreign Corporations.

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DIVISION III

SYSTEM OF FOREIGN CORPORATION JURISPRUDENCE

PART ONE—Commentaries

CHAPTER I.

THE ADMITTANCE OF FOREIGN CORPORATIONS.

- §338. Power of the State to Impose Conditions of Admittance.
- §339. Constitutional Limitations.
- §340. Comity.
- §341. Effect of Compliance with Local Law.
- §342. Extra-Territorial Force of Judgments.
- §343. Status of Foreign Corporations in Michigan Courts.
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§338. Power of the State to Impose Conditions of Admittance.

A corporation is a creature of local law. Because such laws have no extra-territorial force, the corporate children of a parent state need not be recognized by a sister state. Each state has power to admit foreign corporations without restriction, or to admit them upon conditions, or to admit some and exclude others, or to exclude all, except as the power is restricted by limitations expressed in the Federal Constitution¹.

1. In the leading case of *Paul v. Virginia* 8 Wall. (U. S.) 168, 19 L. ed. 357-360, Justice Field said: "The corporation being the mere creation of local law can have no legal existence beyond the limits of the sovereignty where created. . . . Having no absolute right of recognition in other states, but depending for such recognition and enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and condi-

tions as those states may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as, in their judgment, will best promote the public interest. The whole matter is in their discretion." *New York Mortgage Co. v. Secretary of State*, 150 Mich. 197; *Pollock v. German Fire Ins. Co.*, 132 Mich. 225-227; *Waters-Pierce Oil*

§339. Constitutional Limitations.

The only limitations upon the power of a state to exclude foreign corporations arise where the corporation is employed by the Federal Government in the exercise of governmental or quasi-governmental functions², and in that other class of instances where the corporation is engaged exclusively in foreign or inter-state commerce³.

Corporations are not "citizens" within the meaning of the clause of the Federal Constitution providing that, "The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states"⁴, nor are statutes excluding, or imposing conditions upon, foreign corporations within the prohibitions of the Fourteenth Amendment⁵.

§340. Comity.

Comity, which in a word expresses a courteous disposition to accommodate, has led the sister states to forbear exercise of the power of total exclusion of foreign corporations, except in instances where admittance of a foreign company would transgress some principle of local public policy⁶. In these instances the hand of the state is raised in defense of her citizens, but otherwise it is extended in dignified, if not in cordial, welcome.

In recent years the tendency throughout the states has been to impose more or less onerous conditions upon the admittance of foreign corporations. This policy has been prompted by various motives—sometimes by a spirit of retaliation, induced by the stringent laws of other states, and sometimes by a just desire to bring these ambulatory aliens under definite state control, and to fix upon them some fair portion of the common burden of state support.

Except as to corporations employed by the federal government, and corporations engaged solely in foreign or inter-state commerce, the admittance of a foreign corporation within our state

Co. v. Texas, 177 U. S. 28, 44 L. ed. 657; Attorney General v. A. Booth & Co., 143 Mich. 89-102.

2. Pembina etc. Mining & Milling Co. v. Pennsylvania, 125 U. S. 181, 31 L. ed. 650; Hooper v. California, 155 U. S. 648, 39 L. ed. 297-300.

3. Neyens v. Worthington, 150

Mich. 580-587.

4. Pembina etc. Mining & Milling Co. v. Pennsylvania, ante; Pollock v. German Fire Ins. Co., 132 Mich. 225-227; U. S. Const. Art. IV.

5. Attorney General v. A. Booth & Co., 143 Mich. 89-102; Pollock v. German Fire Ins. Co., ante.

6. New York Mortgage Co. v. Secretary of State, 150 Mich. 197.

borders is purely a matter of comity. This comity may be extended, suspended or withheld upon such terms as the legislature may prescribe⁷.

§341. Effect of Compliance with Local Law.

After a foreign corporation has been lawfully admitted to transact business in this state, it is upon practically the same footing as a domestic corporation⁸. The terms of its charter are respected so far as they are in harmony with our laws⁹, but powers and privileges withheld from domestic corporations cannot be lawfully exercised by foreign corporations in this state¹⁰. By entering this state such corporations tacitly agree to submit to its laws.

Statutes of a foreign corporation's home state relating to remedies, penalties and forfeitures do not follow the corporation across our borders¹¹. To permit them to do so would be to give such statutes extra-territorial effect—to permit the laws of a foreign jurisdiction to override our own.

§342. Extra-Territorial Force of Judgments.

The "full faith and credit" clause¹² of the Federal Constitution renders the judgment of a court of a foreign jurisdiction conclu-

7. *Stack v. Detour Lumber Co.*, 151 Mich. 21-29; *New York Mortgage Co. v. Secretary of State*, 150 Mich. 197-202; *Attorney General v. A. Booth & Co.*, 143 Mich. 89-102; *People v. Home Life Assurance Co.*, 111 Mich. 405; *People v. Hawkins*, 106 Mich. 479-482; *Moline Plow Co. v. Wilkinson*, 105 Mich. 57-60; *Shaffer Iron Co. v. Stone*, 88 Mich. 464-470; *Isle Royale Land Co. v. Osmun*, 76 Mich. 162; *Hartford Fire Ins. Co. v. Raymond*, 70 Mich. 485-501; *Diamond Match Co. v. Powers*, 51 Mich. 145-148; *People v. Howard*, 50 Mich. 239-247; *State Treasurer v. Auditor General*, 46 Mich. 224; *Home Ins. Co. v. Davis*, 39 Mich. 238; *Thompson v. Waters*, 25 Mich. 214-220; *Glens Falls Ins. Co. v. Circuit Judge*, 21 Mich. 579; *Hooper v. California*, 155 U. S. 648, 39 L. ed. 297-299; *Floyd v. National Loan & Investment Co.*, 49 W. Va. 327, 54

L. R. A. 536.

8. *Stack v. Detour Lumber Co.*, 151 Mich. 21-29; *Isle Royale Land Co. v. Osmun*, 76 Mich. 162-171; *Floyd v. National Loan & Investment Co.*, 49 W. Va. 327-54 L. R. A. 536-544.

9. *Warner v. Delbridge & Cameron Co.*, 110 Mich. 590-594.

10. *People v. Howard*, 50 Mich. 239-247; *Thompson v. Waters*, 25 Mich. 214, C. L. 1897, Sec. 10467.

11. It is the charter alone, not general legislation, that is given recognition. Thus a local statute of Illinois providing that Illinois corporations shall not interpose the plea of usury, will not be recognized in a suit brought by an Illinois corporation in a Michigan court upon a usurious contract made in Michigan. —*Stack v. Detour Lumber Co.*, 151 Mich. 21-29.

12. U. S. Const. Art. IV., Sec. 1.

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sive in this state as to all matters adjudicated¹³. This general rule has been limited. A mere order of court calling in unpaid stock subscriptions—a mere judicial exercise of power that might have been as well exercised by a board of directors—is not a judgment entitled to “full faith and credit” within the meaning of the constitutional provision¹⁴. Against the enforcement of such a foreign order in this state, the defendant may interpose any defense which he may have, tending to defeat his subscription contract.

§343. Status of Foreign Corporations in Michigan Courts.

Upon giving security for costs, a foreign corporation may prosecute in courts of this state in the same manner as domestic corporations¹⁵. Where a foreign corporation brings suit, it need not aver compliance with the state law. Compliance is presumed¹⁶. Non-compliance may be shown under a plea of general issue without notice¹⁷. The objection that a plaintiff foreign corporation is not authorized to do business in this state should be raised in the trial court and should be supported by proof¹⁸.

Authority to do business in this state is unnecessary for the purpose of enforcing, in Michigan courts, a contract for goods sold upon orders taken by an itinerant salesman and supplied from stock carried outside the state¹⁹. The mere fact of launching a suit in a Michigan court does not, in itself, amount to “carrying on business” here within the prohibition of our statute²⁰.

§344. Service of Process Upon Foreign Corporations.

There is no statute in Michigan providing for service of process upon foreign corporations in cases where, concurrently, the plaintiff is a non-resident and the right of action arose outside this state²¹. But where the plaintiff is a non-resident and the right of

13. *Mutual Fire Ins. Co. v. Phoenix Furn. Co.*, 108 Mich. 170; *Bone-steel v. Todd*, 9 Mich. 371-375.

14. *Warner v. Delbridge & Cameron Co.*, 110 Mich. 590-593.

15. C. L. 1897, Sec. 10466.

16. *Prussian National Ins. Co. v. Eisenhardt*, 153 Mich. 198.

17. *Swing v. Cameron*, 145 Mich. 175.

18. *Warner v. Delbridge & Cameron Co.*, 110 Mich. 590-596.

19. *Coit v. Sutton*, 102 Mich. 324;

M. I. Wilcox Cordage & Supply Co. v. Mosher, 114 Mich. 64. *Fifth Avenue Library Society v. Hastie*, 15 D. L. N. 939. *American Insurance Co. v. Cutler*, 36 Mich. 261.

20. *Marshall's Corp.*, p. 1199; *Emerson v. McCormick Harvesting Machine Co.*, 51 Mich. 5-7; *St. Louis A. & T. R. Co. v. Fire Ass'n*, 60 Ark. 325, 28 L. R. A. 83.

21. *Grand Trunk Ry. Co. v. Circuit Judge*, 106 Mich. 248; *Reimers v. Seatco Mfg. Co.*, 70 Fed. 573.

action arose in Michigan, or where the plaintiff is a resident and the right arose outside this state, or where the plaintiff is a resident and the right arose in Michigan, service of process is fully authorized by statute²². The fact that a corporation is foreign to this state authorizes commencement of suit against it by attachment, even in actions of tort²³. Foreign corporations may proceed, and may be proceeded against, by garnishment²⁴. In actions against foreign insurance companies, service of process may be made upon the Commissioner of Insurance, or his deputy²⁵. The bringing of vexatious suits against foreign corporations is penalized²⁶.

22. C. L. 1897, Sec. 10442, as am. by Act. 3 Pub. Acts 1909, p. 7-8. Sec. 104, note 24, ante.

23. As to commencement of suit by attachment in Justice Court, see C. L. 1897, Sec. 721; As to Circuit Court attachment, see C. L. 1897, Sec. 10557; as to attachment in tort cases, see C. L. 1897, Sec. 10011, *et seq.*

24. As to Justice Court garnishment, see C. L. 1897, Sec. 1014, am. Act 73 Pub. Acts 1903, p. 97; garnishment in attachment cases, see C. L. 1897, Secs. 746-747. Circuit Court garnishment, see C. L. 1897, Sec. 10628 *et seq.*

25. C. L. 1897, Sec. 10015, *et seq.*; Id. Sec. 5116, *et seq.*

26. C. L. 1897, Sec. 10475.

PART TWO—The Annotated Act

CHAPTER II.

THE ACT FOR THE ADMISSION OF FOREIGN CORPORATIONS.

(Act 206 Pub. Acts 1901, p. 316; as amended by Act 34 Pub. Acts 1903, p. 40; Act No. 310 Pub. Acts of 1907, p. 413; Act No. 3 Pub. Acts 1907, extra session).

- §345. Foreign Corporation Law.—Title of Act.
- §346. Foreign Corporation Law.—Section Relating to Initial Steps.
- §347. Carrying on Business in Michigan.
- §348. Remedy for Non-Compliance.
- §349. Application for Admittance.
- §350. Pre-Requisites of Admittance.
- §351. Foreign Corporation Law.—Sections Relating to Franchise Fee.
- §352. Payment of Franchise Fee.
- §353. Foreign Corporation Law.—Section Relating to Certificate of Authority.
- §354. Refusal to Grant Admittance.
- §355. Exercise of Unauthorized Powers.
- §356. Foreign Corporation Law.—Increase of Capital.—Penalties.
- §357. Franchise Fee upon Increase of Capital.
- §358. Penalty for Non-Compliance.
- §359. Foreign Corporation Law.—Effect of Non-Compliance.
- §360. Non-Compliance.—Its Effect upon Contracts.
- §361. Foreign Corporation Law.—Agents of Unauthorized Companies.
- §362. Criminal Liability of Agents of Unauthorized Foreign Corporations.
- §363. Foreign Corporation Law.—Exceptions.
- §364. Foreign Corporations Licensed by Commissioner of Insurance.
- §365. Foreign Corporations Licensed by State Treasurer.
- §366. What Constitutes Inter-State Commerce?
- §367. Foreign Corporation Law.—Section Relating to Construction of Term "Corporations."
- §368. Foreign Corporation Law.—Section Relating to Service of Process.
- §369. Validity of Service upon Secretary of State.

§345. Foreign Corporation Law.—Title of Act.

"An act to prescribe the terms and conditions on which foreign corporations may be admitted to do business in Michigan."

§346. Foreign Corporation Law.—Section Relating to Initial Steps.

The People of the State of Michigan enact:

Section 1. It shall be unlawful for any corporation organized under the laws of any state of the United States, except the State of Michigan, or of any foreign country, to carry on its business in this State, until it shall have procured from the Secretary of State of this State a certificate of authority for that purpose. To procure such certificate of authority every such foreign corporation or association shall comply with the following provisions: It shall file and record in the office of the Secretary of State a certified copy of its charter, or articles of incorporation, and file evidence of appointment of an agent in this State to accept service of process on behalf of said corporation, and shall pay to the Secretary of State the requisite filing, recording and franchise fees. Such corporation, by its president, secretary, treasurer and superintendent, or any two of them shall make and file with the Secretary of State a statement duly sworn to by at least two of such officers, in such form as the Secretary of State may prescribe, containing the following facts:

First. The location of its principal office and its principal place or places of business, and the names and addresses of its principal officers;

Second. The location of its principal office and the principal place of business in Michigan, and the name and addresses of the officers or agent of the company in charge of its business in Michigan;

Third. The total value of the property owned and used by the company in its business, giving its location and general character and stating separately the value of its tangible property, of its cash and credits, its franchises, patents, trade marks, formulas, good will;

Fourth. The value of the property owned and used in Michigan and where situated;

Fifth. The total amount of business transacted during the preceding year and the amount of business, if any, transacted in Michigan;

Sixth. Such other facts bearing on the matter as the Secretary of State may require, including a statement of the particular purpose or particular kind of business for which the company desires admission to this State.

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§347. Carrying on Business in Michigan.

"The weight of authority holds that a single sale of goods, or a single business transaction, by such a (foreign) corporation cannot be held to amount to carrying on business, where there is no purpose to do any further business."—Justice McAlvay, in *Neyens v. Worthington*, 150 Mich. 580. See also *Delaware & Hudson Canal Co. v. Mahlenbrock*, 63 N. J. 281; 45 L. R. A. 538. Yet this doctrine, while unquestionably sound, is to be applied with extreme caution. If performance of the "single transaction" involves operations in this state covering a considerable period of time, or if it necessitates the making of collateral contracts within this state, it will amount to doing business in Michigan within the statutory prohibition.—*Houghton Elevator & Machine Co. v. Detroit Candy Co.*, 16 D. L. N. 13 (March, 1909); *Hastings Industrial Co. v. Moran*, 143 Mich. 679; *Rough v. Breitung*, 117 Mich. 48.

Where a single, indivisible contract made by a foreign corporation involves both matters of interstate commerce and transactions forbidden by our statute, the contract is void.—*Houghton Elevator & Machine Co. v. Detroit Candy Co.* ante. But a contract relating to matters which are purely the subject of inter-state commerce, if otherwise valid, will be sustained.—Sec. 366 post; *Fifth Ave. Library Society v. Hastie*, 15 D. L. N. 939 (Dec. 1908); *Coit & Co. v. Sutton*, 102 Mich. 324. A corporation whose business is partly local and partly interstate, is within the terms of the statute as to that portion of its business conducted wholly within this state.—*Osborne v. Florida*, 164 U. S. 650, 41 L. ed. 586; *Crutcher v. Kentucky*, 141 U. S. 47, 35 L. ed. 649.

§348. Remedy for Non-Compliance.

Mandamus does not lie to compel a foreign corporation to comply with our statutes. The remedy is by way of a *quo warranto* proceeding, or by an action to enforce any penalty which may be provided by law.—*Secretary of State v. National Salt Co.*, 126 Mich. 644; Sec. 356, post.

§349. Application for Admittance.

Application for admittance is made by way of a sworn statement (see form Sec. 467 post), printed forms for which will be supplied by the Secretary of State, upon request.

§350. Pre-Requisites of Admittance.

The steps required for gaining admittance could hardly be better stated than they have been in the instruction sheet prepared and issued by the Division of Corporations of the State Department, from which the following excerpt is quoted:

"Four things are required preliminary to the admission of a foreign corporation to carry on business in Michigan.

First. It must file for record a copy of its charter or articles of incor-

poration, certified by the Secretary of State or other proper officer in whose office the original is filed or recorded.

Second. A sworn statement by at least two of its principal officers, setting forth the facts specified in the statute.

Third. Evidence of appointment of an agent in this State to accept service of process.

Fourth. Payment of the required fees.

Items second and third in the sworn statement should include only such property as is owned and used by the company in its business. These items have no reference to the amount of authorized capital nor to the amount of outstanding capital stock, nor to property which may be owned by the company but not used in its business.

It will often save delay if the statement shall show in the first instance of what, in a general way, the property consists and where situated.

The laws of Michigan do not permit the joining in one corporation of several different purposes or objects.

Where the articles of incorporation contain several different purposes, the application should state for what particular purpose the company desires to be admitted, and that purpose must be one for which a corporation could be organized under Michigan law.

The fees payable to the State are as follows:

The franchise specified in the act,

Recording articles of incorporation, twenty cents per folio,

Filing, one dollar,

Certificate, twenty-five cents."

§351. Foreign Corporation Law.—Sections Relation to Franchise Fee.

Section 2. From the papers as filed and the facts so reported and any other facts coming to his knowledge bearing upon the question, the Secretary of State shall determine the proportion of the authorized capital stock of the company represented by its property and business in Michigan. Any such corporation shall have the right on application, to be heard by the Secretary of State touching the matter of the determination of the proportion of its capital stock represented by property used and business done in Michigan. Any corporation aggrieved by the decision of the Secretary of State, may, within ten days, appeal to a board of appeal consisting of the Auditor General, State Treasurer and Attorney General, whose decision in the matter shall be final.

Section 3. Such company shall pay to the Secretary of State a franchise fee of one-half a mill on each dollar of the proportion of its authorized capital stock represented by the property owned and used and business transacted in Michigan, determined as

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above provided. And in case such corporation is not at the time of admission carrying on any business outside of Michigan, it shall pay a franchise fee on its entire authorized capital stock. But such fee shall in no case be less than twenty-five dollars.

§352. Payment of Franchise Fee.

The Secretary of State has the right to gain his information concerning the part of the corporation's property in Michigan from any sources at his command. Having determined this, the franchise fee of the applicant corporation is fixed by him at the rate of fifty cents for each one thousand dollars in value of such property. A "tramp" corporation having no business elsewhere, will be charged upon its full, authorized capital stock. In all cases the franchise fee will be at least \$25. When payment has been made and accepted and the permission granted, the fee cannot be recovered back, even though the right of admittance may not be necessary or exercised.—*Moline Plow Co. v. Wilkinson*, 105 Mich. 57-60.

§353. Foreign Corporation Law.—Section Relating to Certificate of Authority.

Section 4. When such corporation has fully complied with the provisions of this act, the Secretary of State may issue to such corporation a certificate of authority to carry on such business in this State, during the period of its corporate existence, but not exceeding thirty years: Provided, That no such foreign corporation shall be permitted to transact business in this State unless it be incorporated in whole, or in part, for the purpose or object for which a corporation may be formed under the laws of Michigan, and then only for such purpose or object. And the Secretary of State shall in the certificate which he issues state under what act such corporation is to carry on business in this State, and such corporation shall have all the powers, rights and privileges and be subject to all the restrictions, requirements and duties granted to or imposed upon corporations organized under such act: Provided further, That the carrying on in this State by such corporation, of business for which it has not been so admitted, or failure to fully comply with the requirements of the act under which it has been so admitted, shall be sufficient cause for revoking the certificate of authority to do business in this State, and the Secretary of State may revoke such certificate and shall promptly notify such corporation of such revocation and the reasons therefor by notice sent by mail to the home office of such corporation.

§354. Refusal to Grant Admittance.

The fact that a foreign corporation is organized for a purpose corresponding to purposes authorized by enabling acts of this state does not conclusively establish the right of such corporation to admittance to do business in this commonwealth. The Secretary of State may decline to issue the requisite certificate of authority, in which event mandamus to compel him is the applicant corporation's sole remedy. If, in this proceeding, it is determined by the court that such admittance would be in contravention of public policy, the writ will be denied.—*New York Mortgage Co. v. Sec'y of State*, 150 Mich. 197; *Preferred Tontine Co. v. Sec'y of State*, 133 Mich. 395; *Isle Royale Land Co. v. Sec'y of State*, 76 Mich. 162; *Paul v. Virginia*, 8 Wall. (U. S.) 168, 19 L. ed. 357.

§355. Exercise of Unauthorized Powers.

If a foreign corporation, after admittance, attempts to do unlawful acts, or to exercise unauthorized powers, or to pursue unauthorized purposes, it may be restrained, or may be properly called to account through quo warranto proceedings by the Attorney General.—*Attorney General v. A. Booth & Co.*, 143 Mich. 89.

§356. Foreign Corporation Law.—Increase of Capital.—Penalties.

Section 5. Every corporation which has paid a franchise fee and been admitted to do business in this State, which shall thereafter increase its authorized capital, or shall increase the proportion of its capital stock, represented by property used and business done in Michigan, shall within thirty days after such increase file an additional statement with the Secretary of State, and pay an additional franchise fee of one-half of one mill on each dollar of the amount of increase of its capital stock represented by property owned and business done in Michigan. And any such corporation, shall at any time when requested by the Secretary of State, file an additional statement, under oath of at least two of its officers, showing the proportion of its property used and business transacted in Michigan. Every corporation subject to the provisions of this act which shall neglect or fail to comply with its requirements, shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for every month that it continues to transact business in Michigan, without complying with the requirements of this act, to be recovered by action in the name of the people of the State of Michigan in any court of competent jurisdiction.

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§357. Franchise Fee Upon Increase of Capital.

The franchise fee in effect at the time of increase will control. Should the rate be raised after admittance, but prior to the increase of capital, the advanced rate must be paid upon the increase, but nothing further can be collected by the State upon the original capital. Thus, where a corporation having a capital stock of \$750,000, was admitted at a time when no franchise fee was charged, and thereafter increased its capital to \$950,000, it was held, that the state was entitled to payment of a franchise fee upon the \$200,000 increase only.—Warren-Scharf Paving Co. v. Sec'y of State, 115 Mich. 234.

§358. Penalty for Non-Compliance.

The portion of Section 5 of the act relating to penalties cannot be enlarged by construction.—People v. Crucible Steel Co., 150 Mich. 563. Assumpsit is a proper form of action for the recovery of such penalties.

§359. Foreign Corporation Law.—Effect of Non-Compliance.

Section 6. No foreign corporation, subject to the provisions of this act, shall be capable of making a valid contract in this State until it shall have fully complied with the requirements of this act, and at the time holds an unrevoked certificate to that effect from the Secretary of State.

§360. Non-Compliance—Its Effect Upon Contracts.

Under the statutes of 1901 and 1903 the contracts of unauthorized foreign corporations were not void, but were merely unenforceable in Michigan courts.—Neyens v. Worthington, 150 Mich. 580-586. The defect might be cured at any time by compliance with the law. The portion of these statutes relating to contracts added little to the inhibition of the general statute then, and now, in force providing that, "When, by the laws of this state, any act is forbidden to be done by *any* corporation, or by any association of individuals, without express authority by law, and such act shall have been done by a foreign corporation, it shall not be authorized to maintain any action founded upon such act, or upon any liability or obligation, express or implied, arising out of, or made or entered into in consideration of such act."—C. L. 1907, Sec. 10457; Swing v. Cameron, 145 Mich. 175-178; People's Mutual Benefit Society v. Lester, 105 Mich. 716; Swing v. Weston Lumber Co., 140 Mich. 344-350; Seamans v. Temple Co., 105 Mich. 400, 23 L. R. A. 430.

Act No. 79 Pub Acts 1893, p. 82 (repealed by Act 270 Pub. Acts 1895, being C. L. 1897, Sec. 8587) provided that, "All contracts made in this state.....by any corporation which has not first complied with this act shall be *wholly void*." In an action upon a contract made in violation of this law, Chief Justice Grant said: "We are forced to the conclusion from this record that this was a corporate contract, and void under the law above

cited. While the corporation might be estopped to plead such a contract in its defense, it cannot maintain an action upon it without annulling the law."—*Rough v. Breitung*, 117 Mich. 48-56.

The language of the present statute is a more liberal invitation to the invocation of estoppels. It does not provide that contracts made in violation of it shall be "wholly void," but merely that the corporation shall be without contractual capacity. A corporation cannot defend itself by asserting that it has acted illegally. The public is not bound, at peril, to ascertain that a corporation, with which it deals, has complied with the law. Clearly the state and parties who contract with the corporation are the only ones who may take advantage of the defect. It has been decided that, upon a wholly executory contract, the defense of corporate incapacity under this statute may be successfully interposed by one who has contracted with the unauthorized corporation.—*Houghton Elevator & Machine Co. v. Detroit Candy Co.*, 16 D. L. N. 13 (March, 1909).

Where a contract has been fully performed by an unauthorized foreign corporation, it is nevertheless unenforceable under the provisions of C. L. 1897, Sec. 10467, ante. But where, during or after the time of such performance, the corporation has complied with the law, there is no just reason why one who has received the benefit of such performance should not be held bound, notwithstanding the fact that the contract was defective when made.—See *Cook's Corp.* Sec. 696, p. 2161.

§361. Foreign Corporation Law.—Agents of Unauthorized Companies.

Section 7. It shall be unlawful for any person to act as agent for any foreign corporation not authorized to do business in this State or in any manner to aid in the transaction of the business of such unauthorized foreign corporation in this State. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than fifty dollars, no more than five hundred dollars for each offense and in default of payment of such fine, shall be imprisoned in the county jail for a period of not less than thirty days nor more than one year, or he may be punished by both such fine and imprisonment at the discretion of the court.

§362. Criminal Liability of Agents of Unauthorized Foreign Corporations.

In sustaining a conviction under a similar act relating to soliciting insurance for unauthorized foreign insurance companies within this state, Justice Marston made the following statement: "The clearly expressed intention of that act (C. L. 1897, Sec. 5157) was to prevent unauthorized companies from taking any risks in this state. This was and has been for

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some time, the settled policy of the state, as expressed by legislation, and is for the protection of citizens of the state and companies submitting to our laws and paying state taxes. The statute is intended to be prohibitory in its character. The policy is wise, and as such should be enforced."—*People v. Howard*, 50 Mich. 239-248. See also *People v. Gay*, 107 Mich. 422. There can be no doubt that, for like reasons, the penalties imposed upon agents of unauthorized foreign corporations, found guilty under Section 7 of the act, will be fully enforced.

It would be no defense that the agent, or all of the members of the corporation were residents of this state.—*Lancaster v. Amsterdam Improvement Co.*, 140 N. Y. 576, 24 L. R. A. 322; *Demarest v. Grant*, 128 N. Y. 205, 13 L. R. A. 854.

§363. Foreign Corporation Law.—Exceptions.

Section 8. The provisions of this act shall not be applicable to such foreign corporations as are permitted to do business in this State by license issued by the Commissioner of Insurance, or by the State Treasurer, according to the provisions of law. Nor shall this act be construed to prohibit any sale of goods or merchandise which would be protected by the rights of interstate commerce.

§364. Foreign Corporations Licensed by Commissioner of Insurance.

Power is vested in the Commissioner of Insurance to issue certificates or licenses conferring authority to do business in this State, to the following classes of foreign corporations:

- (a) Plate glass, accident, live stock, steam boiler and fidelity insurance companies.—C. L. 1897, Sec. 5110 *et seq.*;
- (b) Co-operative insurance companies.—Id. Sec. 5116, *et. seq.*
- (c) Mutual marine insurance companies.—Id. Sec. 5121;
- (d) Mutual fire insurance companies.—Id. Sec. 5122; 7271;
- (e) Fire, fire and marine, and inland and marine insurance companies —Id. Sec. 5123 *et seq.*, also Sec. 5133;
- (f) Lloyds associations.—Id. Sec. 5135;
- (g) Burglary, robbery and mail transit insurance companies.—Id. Sec. 5144 *et seq.*;
- (h) Surety and guaranty companies.—Id. Sec. 5199;
- (i) Life insurance companies.—Id. Sec. 7199;
- (j) Farm stock insurance companies.—Id. Sec. 7381;
- (k) Bicycle insurance companies.—Id. Sec. 7414;
- (l) Co-operative and mutual benefit associations.—Id. Sec. 7513;
- (m) Fraternal beneficiary societies.—Id. Sec. 7744;
- (n) Manufacturers mutual fire insurance companies.—Id. Sec. 7322;
- (o) Mutual integrity insurance companies.—Id. Sec. 7340;
- (p) Log and timber insurance companies.—Id. 7364.

§365. Foreign Corporations Licensed by State Treasurer.

The State Treasurer is empowered to authorize the following classes of foreign corporations to do business in Michigan:

- (a) Express companies.—C. L. 1897, Sec. 5258;
- (b) Telegraph companies.—C. L. 1897, Sec. 5264;

§366. What Constitutes Inter-State Commerce?

A contract made in Michigan, or elsewhere, for shipment of goods from another state into this state, and for their delivery in the original packages to the contract purchaser is a contract relating to inter-state commerce, and is not, nor could it be, prohibited by state law.—*Sloman v. Moebs Co.*, 139 Mich. 334. And this would be true if the shipment were made C. O. D.—*American Express Co. v. Iowa*, 196 U. S. 133, 49 L. ed. 417.

Goods shipped into this state, put into private storage and thence sold by an agent of the shipper and delivered in original packages to retailers retain the character of inter-state commerce until so sold and delivered.—*Lyng v. Michigan*, 135 U. S. 161, 34 L. ed. 150, overruling *People v. Lyng*, 74 Mich. 579. Sale in original packages from shipper to consumers would also be within the protection of the inter-state commerce clause.—*Schollenberger v. Pennsylvania*, 171 U. S. 1, 43 L. ed. 49. But the character of inter-state commerce is divested by the first sale. After that the goods, whether in original packages or not, are intra-state commerce, subject to local control.—*Commonwealth v. Paul*, 170 Pa. 284, 30 L. R. A. 396; *Commonwealth v. Schollenberger*, 156 Pa. 201, 22 L. R. A. 155. In the latter case an original package is defined to be, "Such a package as is used in good faith by producers and shippers for convenience in handling, and security in transportation of, their wares in the ordinary course of actual commerce." Although the two Pennsylvania cases above cited were overruled by the United States Supreme Court in *Schollenberger v. Pennsylvania*, ante, no doubt has been cast upon the soundness of the propositions which they peculiarly illustrate and in support of which they are cited.

In the *Schollenberger* case (ante) a 10-pound tub of oleomargarine, sold direct to the consumer, was held to be an original package, but in the later case of *Austin v. Tennessee*, 179 U. S. 343, 45 L. ed. 224, (1900) it was held that small paper packages of cigarettes, shipped loose in open baskets supplied by an express company could not be regarded as original packages. In deciding the case, Justice Brown said: "We are told that each one of these (cigarette) packages is an original package, and entitled to the protection of the constitution of the United States as a separate and distinct importation. We can only look upon it as a discreditable subterfuge, to which this court ought not to lend its countenance. If there be any original package at all in this case, we think it is the basket and not the paper box."

For Michigan cases bearing upon the subject of inter-state commerce, see *City of Muskegon v. Hanes*, 149 Mich. 460; *City of Muskegon v. Zeeryp*, 134 Mich. 181; *People v. Bunker*, 123 Mich. 160.

§ 367-§ 369 FOREIGN CORPORATION JURISPRUDENCE

§367. Foreign Corporation Law.—Section Relating to Construction of Term “Corporations.”

Section 9. The term “corporations” as used in this act shall be construed to include all associations, partnership associations and joint stock companies having any of the powers or privileges of corporations, not possessed by individuals or partnerships, under whatever term or designation they may be defined and known in the state where organized.

§368. Foreign Corporation Law.—Section Relating to Service of Process.

Section 10. No such corporation having appointed an agent to accept service of process shall have power to revoke or annul such appointment until it shall have filed notice of appointment of some other person in this State as such agent. Service of process may also be made upon any officer or agent of such corporation in this State, or service may be made upon the Secretary of State, who shall immediately notify the corporation thus served, by mailing notice thereof and a copy of such process to its address. There shall be paid to the Secretary of State at the time of such service a fee of five dollars, which sum may be taxed as costs to the plaintiff in case he prevails in the proceeding.

§369. Validity of Service Upon Secretary of State.

Is service upon the Secretary of State “due process of law”? By accepting the benefits of the statute, foreign corporations consent to its terms and accept its burdens. Service of the same general character has been repeatedly sustained.—*Mutual Reserve Fund Life Association v. Phelps*, 190 U. S. 147, 47 L. ed. 987; *Aetna Ins. Co. v. Commonwealth*, 106 Ky. 864, 45 L. R. A. 355. But see *Pinney v. Providence Loan & Investment Co.*, 106 Wis. 396, 50 L. R. A. 577, holding that service upon a register of deeds, designated by statute, did not afford due process of law.

As against a corporation not authorized by law to do business in this State (*Old Wayne Mutual Life Ass'n v. McDonough*, 204 U. S. 8, 51 L. ed. 345) or as against a corporation which has withdrawn from this State and filed notice of withdrawal (*Mutual Reserve Fund Life Ass'n v. Boyer*, 62 Kan. 31, 50 L. R. A. 538) such service would be ineffectual. But there is authority for saying that service upon a person whom the company had irrevocably appointed as agent to receive service of process would be valid after withdrawal of the company from the state.—*Magoffin v. Mutual Reserve Fund Life Ass'n*, 87 Minn. 360.

State statutes in force at the time of admittance of a foreign corporation do not form a contract between the corporation and the state. Such

laws may be altered or repealed at pleasure, and all foreign corporations within the state are bound by the law as changed. If dissatisfied they may withdraw. By remaining they pledge compliance. It follows that the new method of service of process provided by Section 10 of the act applies to foreign corporations that gained admittance before the law was enacted, as well as to those admitted afterwards.—*Connecticut Mutual Life Ins. Co. v. Spratley*, 172 U. S. 602, 43 L. ed. 569; *Douglas v. Kentucky*, 168 U. S. 488, 42 L. ed. 553, foreign corporations are "governmental subjects." In the language of Justice Swayne: "They involve public interests, and legislative acts concerning them are, necessarily, public laws. Every succeeding legislature possesses the same jurisdiction and power with respect to them as its predecessors. The latter have the same power of repeal and modification which the former had of enactment, neither more nor less. All occupy in this respect a footing of perfect equality."—*Newton v. Mahoning County*, 100 U. S. 548, 25 L. ed. 710.

DIVISION IV
System of Corporation Forms and Precedents

PART ONE
FORMS OF INCORPORATION

PART TWO
FORMS OF CONVEYANCING

DIVISION IV

SYSTEM OF CORPORATION FORMS AND PRECEDENTS

PART ONE—Forms of Incorporation

§370. Form of Articles of Association Under Consolidated
Corporation Law. Common Stock Only.

ARTICLES OF ASSOCIATION of

.....

We, the undersigned, desiring to become incorporated under the provisions of Act No. 232, of the Public Acts of 1903, entitled "An act to revise and consolidate the laws providing for the incorporation of manufacturing and mercantile companies, or any union of the two, and for the incorporation of companies for carrying on any other lawful business, except such as are precluded from organization under this act by its express provisions, and to prescribe the powers and fix the duties and liabilities of such corporations," and the acts amendatory thereof and supplementary thereto, do hereby make, execute and adopt the following articles of association, to-wit:

ARTICLE I.

The name assumed by this association, and by which it shall be known in law, is

ARTICLE II.

The purpose or purposes of this corporation are as follows:
.....

ARTICLE III.

The principal place.. at which operations are to be conducted is at in the county of State of

ARTICLE IV.

The capital stock of the corporation hereby organized is the sum of dollars.

ARTICLE V.

The number of shares into which the capital stock is divided is of the par value of dollars each.

ARTICLE VI.

The amount of capital stock subscribed is the sum of dollars.

ARTICLE VII.

The amount of said stock actually paid in at the date hereof is the sum of dollars, of which amount dollars has been paid in cash, and dollars has been paid in other property, an itemized description of which, with the valuation at which each item is taken, is as follows, viz: (For form of itemized description and valuation see Sec. 469 post.)

ARTICLE VIII.

The office in the State of Michigan for the transaction of business shall be kept at

ARTICLE IX.

The term of existence of this corporation is fixed at years from the date hereof.

ARTICLE X.

The names of the stockholders, their respective residences and the number of shares of stock subscribed for by each are as follows:

| Names. | Residence. | No. of Shares. |
|--------|------------|----------------|
| | | |

IN WITNESS WHEREOF, We, the parties hereby associating, for the purpose of giving legal effect to these articles, hereunto sign our names, this day of, A. D. 19....

Names.
.....

STATE OF MICHIGAN, }
COUNTY OF } ss.

On this day of, 19...., before me, a in and for said county, personally appeared known to me to be the persons named in, and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

My commission expires 19....

STATE OF MICHIGAN, }
COUNTY OF } ss.

..... and being duly sworn do depose and say that they are three of the organizers of the Company, whose articles of association are hereto attached; that they know the property described in Article seven of such articles of association and taken in payment for capital stock, and that the same has been actually transferred to such corporation, and further say that said property is of the actual value of Dollars. And further say not.

Subscribed and sworn to before me this day of, A. D. 19....

Notary Public.

My commission expires

§371. Form of Articles of Association Under Consolidated Corporation Law.—Common and Preferred Stock.

ARTICLES OF ASSOCIATION
of

We, the undersigned, desiring to become incorporated under the provisions of Act No. 232, of the Public Acts of 1903, entitled, "An act to revise and consolidate the laws providing for

the incorporation of manufacturing and mercantile companies or any union of the two, and for the incorporation of companies for carrying on any other lawful business, except such as are precluded from organization under this act by its express provisions, and to prescribe the powers and fix the duties and liabilities of such corporations," and the acts amendatory thereof and supplementary thereto, do hereby make, execute and adopt the following articles of association, to-wit:

ARTICLE I.

The name assumed by this association, and by which it shall be known in law, is

ARTICLE II.

The purpose or purposes of this corporation are as follows:
.....

ARTICLE III.

The principal place.. at which operations are to be conducted is at in the county of, State of

ARTICLE IV.

The capital stock of the corporation hereby organized is the sum of dollars, of which dollars shall be comon stock, and dollars shall be preferred stock. The preferred stock shall be subject to redemption at par on the day of A. D. 19..., and the holder shall be entitled to a dividend of per cent per annum, payable, which shall be cumulative and payable before any dividend shall be set apart or paid on the common stock. The preferred stockholders shall be entitled to vote for directors.

ARTICLE V.

The number of shares into which the capital stock is divided is of the par value of dollars each.

ARTICLE VI.

The amount of common stock subscribed is dollars. The amount of preferred stock subscribed is..... dollars.

ARTICLE VII.

The amount of common stock actually paid in is the sum of dollars, of which dollars has been paid in cash, and dollars has been paid in other property, an itemized description of which, with the valuation at which each item is taken, is as follows, viz.:

.....
The amount of preferred stock actually paid in is the sum of dollars, of which dollars has been paid in cash, and dollars has been paid in other property, an itemized description of which, with the valuation at which each item is taken, is as follows, viz.:

ARTICLE VIII.

The office in the State of Michigan for the transaction of business shall be kept at

ARTICLE IX.

The term of existence of this corporation is fixed at years from the date hereof.

ARTICLE X.

The names of the stockholders, their respective residences, and the number of shares of stock subscribed for by each are as follows:

| Names. | Residence. | No. of Shares. |
|--------|------------|--------------------|
| | | Common. Preferred. |
| | | |

IN WITNESS WHEREOF, We, the parties hereby associating, for the purpose of giving legal effect to these articles, hereunto sign our names, this day of A. D. 19....

Names.

.....
(Attach jurat and affidavit of valuation as in form Sec. 370 ante.)

FORMS OF STATEMENT OF CORPORATE PURPOSES IN ARTICLES
OF ASSOCIATION OF CORPORATIONS ORGANIZED UNDER
ACT 232 PUBLIC ACTS 1903.

(These forms are taken from articles of association which have successfully passed the scrutiny of the Department of State.)

§ 372-§ 378 CORPORATION FORMS AND PRECEDENTS

§372. Boiler Companies.

The Wickes Boiler Company.

"To manufacture, construct, erect, buy, sell and deal in marine, stationary and portable boilers, heaters, water purifiers, steam generators, filters, structural iron works, boiler iron, steel and metal work of every description, all kinds of machinery, tools and implements."

§373. Bond and Mortgage Companies.

The Bond and Mortgage Guarantee Company.

"To deal in bonds, mortgages and other investment securities."

§374. Buggy Companies.

The Deal Buggy Company.

"The manufacture and selling of buggies, spring wagons and other horse-drawn vehicles."

§375. Cigar Companies.

The Favorite Cigar Company.

"To manufacture, buy and sell cigars, tobaccos, pipes and a general line of smokers' articles, both at wholesale and retail."

§376. Coal Companies.

American Coal & Coke Company.

"To buy, sell and otherwise deal in coal, coke, fuel and any of the products or by-products thereof."

§377. Construction Companies.

Oakwood Contracting Company.

"The engaging in general contracting work, shaft sinking, constructing of overhead equipment on plants, railroad building and tunneling."

§378. Furniture Companies.

Wolverine Furniture Company.

"The manufacture and sale of a general line of household furniture."

§379. Garage Companies.

American Garage & Motor Company.

"To establish, conduct and carry on the business of manufacturing, purchasing, selling, repairing and reconstructing automobiles; manufacturing, purchasing, selling, repairing and reconstructing steam, gas and electric motors to be used in automobiles, launches, or for stationary use, and any and all machinery and appliances for use in connection with said business."

§380. Gasoline Engine Company.

Foss Gasoline Engine Company.

"To manufacture, build, repair, reconstruct and sell gas and gasoline engines, and to build, repair and sell any and all kinds of machinery and tools and do a general machine business."

§381. Gas Companies.

Three Rivers Gas Company.

"To manufacture, buy, sell, supply and otherwise deal in gas and fuel for lighting, heating or other purposes, to which the same now is, or hereafter may be, applied; to manufacture, buy, sell, rent, deal in stoves, engines and other apparatus and conveniences that may seem calculated to promote the consumption of gas and fuel, and to carry on the business of a gas company in all its branches."

§382. Glass Companies.

The Donaldson Glass Company.

"Buying and selling glass, putties, tile and kindred merchandise, and the glazing of sash, doors and like openings, setting plate glass and tile, and the manufacture of art glass."

§383. Grocery Companies.

Michigan Grocer Co.

"To buy, sell, deal and trade in, at wholesale, groceries, provisions, tobacco, cigars, woodenware and any other goods, wares and merchandise of similar kind and character; and generally to conduct a wholesale grocery."

§ 384-§ 390 CORPORATION FORMS AND PRECEDENTS .

§384. Hardware Companies.

Bay City Hardware Company.

"The conduct of a general wholesale and retail hardware business; the manufacture of tin and iron work; the dealing in agricultural implements and supplies therefor, and repairs thereto, and the conduct of such other lines of trade as are usually appurtenant to the hardware business."

§385. Hotel Companies.

Colonial Tavern Company.

"To conduct and manage a tavern and to provide entertainment for its guests."

§386. Land Companies.

Northern Land & Iron Company.

"The purchasing, holding and dealing in real estate."

§387. Laundry Companies.

The Standard Laundry Company.

"To carry on and conduct a general laundry business."

§388. Livery Companies.

The Gladstone Livery Company.

"For conducting a livery, sale and feed stable, and buying, trading and selling horses."

§389. Logging Companies.

United Logging Company.

"To conduct a general logging and lumbering business, and in connection therewith to acquire and hold timber and timber lands, to conduct general stores, operate mills and maintain and operate logging roads by steam or otherwise."

§390. Machine Companies.

Valley City Machine Works.

"The manufacturing and selling of machinery, and to engage in a general machine shop and foundry business."

Scientific Instrument Company.

"The manufacture and sale of optical, dental, surgical and other scientific instruments and articles of every kind and nature whatsoever."

§391. Milling Companies.**Naubinway Mill Company.**

"To buy, lease, build, construct, maintain and operate saw mills and lumber yards, and to do all things necessary, suitable or convenient for the carrying on of a general lumber business."

§392. Navigation Companies.**Badger State Transportation Company.**

"To purchase, charter, hold, own, manage and operate steamships and vessels, and engage the same in maritime commerce and navigation on the Great Lakes and waters tributary thereto."

Saginaw Valley Steamship Company.

"To acquire, own and operate boats, and vessels on the Saginaw River, and on the Great Lakes and tributaries, for the transportation of passengers and freight for hire; and to promote navigation upon the Saginaw River and to secure the improvement of the stream for that purpose."

Muskegon & Chicago Navigation Company.

"The conducting of a general passenger and freight traffic on the Great Lakes."

§393. Light and Power Companies.**Pellson Light & Power Company.**

"The production by any and all means, and the purchasing, distributing, supplying and selling of gas and electricity for lighting, fuel, power and all other purposes for which the same may be from time to time used, and for that purpose to erect and maintain dams, power houses, manufacturing plants, pipe lines and mains, and all wires and posts and all other appurtenances and real estate necessary for the proper conduct of said business, or any part thereof."

§394. Lighting Companies.**Fowlerville Lighting Company.**

"To manufacture and distribute electricity for light, heat and power."

§ 395-§ 400 CORPORATION FORMS AND PRECEDENTS

§395. Loan Companies.

Peoples Security Company.

"To make loans, including what is commonly known as 'call loans,' on stocks, bonds, commercial paper, real estate mortgages, and other securities."

§396. Motor Companies.

Detroit Marine Motor Company.

"To manufacture, buy, sell and deal in and with marine watercraft and stationary engines, pumps and dynamos of all kinds, and to do all things that may be incidental or in any way relating to the articles or objects above described."

§397. Orchestra Companies.

The Finney's Famous Orchestra.

"The furnishing of music and musicians for public and private entertainments, balls, parties, concerts, outings, boats and other places of recreation and amusement."

§398. Roller Rink Companies.

The Washington Roller Rink.

"To carry on, conduct, operate and promote the business of a roller skating rink."

§399. Salt Companies.

Superior Salt Company.

"To manufacture, mine and trade in salt, and all articles or products of which salt forms a component part, or may be in any way utilized into a condition, combination, connection, article, substance or form whatsoever; and to purchase, sell, deal in and with crush, refine and treat each, any or all of the articles, products or substances herein mentioned or referred to, and to make, purchase, sell and deal in manufactured articles made partly or wholly from the above mentioned articles, or any of them, or from any like or kindred products or substances whatsoever."

§400. Stock Raising Companies.

The Arbutus Sheep Ranch Company.

"The buying, selling and dealing in and with, and the owning, improving and maintaining of, stock farm property, and the

buying, selling, raising, breeding and dealing in and with sheep and other live stock, and the buying selling and dealing in and with the by-products therefrom and incident thereto, and the buying, selling, raising and dealing in and with the means of subsistence therefor."

Morningside Farm.

"The buying, selling and breeding of cattle, sheep, horses and other live stock."

§401. Theater Companies.

Theatre Comique Amusement Company.

"To engage in the theatrical business and the conducting and carrying on of theaters and places of amusement."

§402. Thresher Companies.

The Sherman Threshing Company.

"To conduct and operate a threshing machine for the purpose of doing job and custom threshing."

§403. Typewriter Companies.

Royal Typewriter Company.

"To manufacture, buy, sell, bail or otherwise dispose of and trade in typewriting machines, appliances, utensils, furniture and stationary adding machines, calculating machines, printing machines, tools, implements and machinery for the manufacture thereof, or used therewith, or relating to or connected therewith, and all articles, appliances and merchandise in anywise connected with typewriters, typewriting machines, adding machines and calculating machines; to acquire, by purchase or otherwise, patent licenses under patents, and interest in patents, for inventions or discoveries in this or in any foreign countries, relating to or connected with any of the above mentioned articles, things or objects; to grant, sell, assign, dispose of, or otherwise contract for licenses in and to any of said patents or interests therein."

§404. Articles of Association.—Amendment Increasing Capital Stock.

**CERTIFICATE OF INCREASE OF CAPITAL STOCK
of the**

.....Company.

(Postoffice address)

We, the undersigned, being the president, and a majority of the directors of the, a corporation existing under the provisions of Act No. 232 of the Public Acts of 1903, do hereby certify, as required by section 2 of said act:

That at a meeting of the stockholders of said corporation expressly called for the purpose of increasing its capital stock, and held at the office of said company on theday of, A. D. 19..., it was resolved, by a vote of two-thirds of the capital stock of said corporation, that the capital stock be increased from dollars to dollars, and that the articles of association relating to capital stock be and the same are amended so as to read as follows, viz.:

The capital stock of the corporation hereby organized is the sum of dollars.

The number of shares into which the capital stock is divided is of the par value of dollars each.

We do further certify that the total amount of stock, including such increase, subscribed is dollars.

The total amount of stock, including such increase actually paid in, is the sum of dollars, of which..... dollars of the increase has been paid in cash, and dollars of the increase has been paid in other property, an itemized description of which, with the value at which each item is taken, is as follows, viz.:

It was further resolved by the same vote that the value of, and the price at which such increase of the capital shall be subscribed and paid for by the stockholders be fixed at..... dollars per share, and the time and manner of subscription and payment of such increased stock shall be as follows:..... and the directors of said corporation are authorized to sell, at not less than the price so fixed, any part of such increase not subscribed by the stockholders, after

they have had a reasonable opportunity to make subscription of their proportionate shares thereof, and the directors may make provision for calling in and cancelling the old and issuing new certificates of stock.

(For other amendments.)

We, the president and the secretary of said corporation, do certify, as required by Section 17 of said act, that at said meeting, it was resolved by a vote of two-thirds of the capital stock, to amend Article No. of said articles so as to read as follows:

ARTICLE

IN WITNESS WHEREOF, we hereunto sign our names this
..... day of, A. D. 19....

.....
President.

.....
Secretary.

.....
.....
.....
Majority
of
Directors.

(Acknowledgment of the certificate is desirable, but not necessary.)

§405. Articles of Association.—Amendment Increasing Capital Stock and Providing for Preferred Stock

CERTIFICATE OF INCREASE OF CAPITAL STOCK
and
PROVIDING FOR PREFERRED STOCK
of the

..... Company.
(Postoffice Address)

We, the undersigned, being the president, the secretary and a majority of the directors of the, a corporation existing under the provisions of Act No. 232 of the Public Acts of 1903, do hereby certify, as required by sections 2 and 35 of said act:

That at a meeting of the stockholders of said corporation expressly called for the purpose of increasing its capital stock and providing for preferred stock and held at the office of said company on the day of, A. D. 19..., it was resolved, by a vote of three-fourths of the capital stock of said corporation, that the capital stock be increased from dollars to dollars, and that the articles of association be so amended as to provide for preferred stock, and that the articles relating to capital stock be and the same are amended so as to read as follows, viz.:

The capital stock of the corporation hereby organized, is the sum of dollars, of which dollars shall be common stock, and dollars shall be preferred stock. The preferred stock shall be subject to redemption at par on the day of, A. D. 19..., and the holder shall be entitled to a dividend of per cent per annum, payable which shall be cumulative and payable before any dividend shall be set apart or paid on the common stock. The preferred stockholders shall be entitled to vote for directors.

The number of shares into which the capital stock is divided is of the par value of dollars each.

We do further certify that the total amount of common stock, including such increase, subscribed is dollars. The total amount of preferred stock subscribed is dollars.

The total amount of common stock, including such increase actually paid in, is the sum of dollars, of which dollars of the increase has been paid in cash, and dollars has been paid in other property, an itemized description of which, with the value at which each item is taken, is as follows, viz.:

The amount of preferred stock actually paid in is the sum of dollars, of which dollars of the increase has been paid in cash, and dollars has been paid in other property, an itemized description of which, with the valuation at which each item is taken, is as follows, viz.:

It was further resolved by the same vote that the value of, and the price at which such increase of the capital shall be sub-

scribed and paid for by the stockholders be fixed at
dollars per share, and the time and manner of subscription and
payment for such increased stock shall be as follows:.....
and the directors of said corporation are authorized to sell, at
not less than the price so fixed, any part of such increase not
subscribed by the stockholders, after they have had a reasonable
opportunity to make subscription of their proportionate shares
thereof, and the directors may make provision for calling in
and cancelling the old and issuing new certificates of stock.

IN WITNESS WHEREOF, we hereunto sign our names this
..... day of, A. D. 19....

.....
President.

.....
Secretary.

.....
.....
.....
Majority
of
Directors.

(Properly, but not necessarily, the certificate should be
acknowledged.)

**§406. Articles of Association.—Amendment Other Than In-
crease of Capital Stock.**

**CERTIFICATE OF AMENDMENT TO THE ARTICLES
OF ASSOCIATION
of the**

.....Company.

We, the undersigned, being president and the secretary
of the a corporation existing under
the provisions of Act No. 232 of the Public Acts of 1903, do
hereby certify, as required by section 17 of said act:

That at a meeting of the stockholders of said corporation ex-
pressly called for the purpose of amending its articles of asso-
ciation and held at the office of said
company on the day of,
A. D. 19..., it was received, by a vote of two-thirds of the

§§ 407, 408 CORPORATION FORMS AND PRECEDENTS

capital stock of said corporation, that Articles No. and of the articles of association be and the same are amended so as to read as follows, viz.:

ARTICLE

.

ARTICLE

.

IN WITNESS WHEREOF we hereunto sign our names this day of, A. D. 19

.
President.

.
Secretary.

(Good practice suggests that the certificate be acknowledged by the executing officers, although the statute does not require acknowledgment.)

§407. Form of Resolution Amending Articles of Association.

(Ovid Elevator Co. v. Sec'y of State, 90 Mich. 466-467.)

RESOLVED, That the articles of association of the Ovid Elevator Company be, and the same are hereby, amended with the consent and vote of all the stockholders, by changing the word "three" to "thirteen," in article 6, so that the same shall read as follows:

"Art. 6. The term of existence of this corporation is fixed at thirteen years from the date hereof."

RESOLVED, Further, That the president and secretary are hereby instructed to file in the proper offices, as required by law, a copy of this resolution, duly signed and certified by them.

§408. Form of Articles of Association.—Associations Not for Profit.

ARTICLES OF ASSOCIATION
of the

.

We, the undersigned, being of full age, and desiring to become incorporated under the provisions of Act No. 171, of the Public Acts of Michigan for 1903, entitled, "An act for the incorporation of associations not for pecuniary profit," do hereby make, execute and adopt the following articles of association, to-wit:

ARTICLE I.

The name or title by which said corporation is to be known in law is,

ARTICLE II.

The purpose or purposes for which it is formed are as follows:

ARTICLE III.

The principal office or place of business shall be at in the county of

ARTICLE IV.

The term of existence of this proposed corporation is fixed at years from the date of these articles.

ARTICLE V.

The number of trustees or directors shall be.....

ARTICLE VI.

The names of the trustees or directors selected for the first year of its existence are as follows:

ARTICLE VII.

The qualifications required of officers and members are as follows:

IN WITNESS WHEREOF, We, the parties hereby associating, have hereunto subscribed our names, this day of, A. D. 19....

Names.

.....

(Attach jurat as in form Sec. 370 ante.)

FORMS OF STATEMENT OF CORPORATE PURPOSES IN ARTICLES OF
ASSOCIATION ORGANIZED UNDER ACT 177 PUBLIC
ACTS OF 1903.

(These forms are taken from articles of association which have successfully passed the scrutiny of the Department of State.)

§ 409-§ 413 CORPORATION FORMS AND PRECEDENTS

§409. Board of Trade.

Gladwin Board of Trade.

"To secure the co-operation of merchants, manufacturers and business men in building up and promoting the social, moral and business interests of its members, and to advance the welfare and growth of the city and the progress, extension and increase of its trade; to acquire the title to real and personal property, and to hold, sell, give, assign, transfer or lease the same to any factory, railway, street railway, or other enterprise; to promote or aid public celebrations, exhibitions, fairs, as may appear to be for the best interests of the city, and as this association may deem proper."

Alpena Chamber of Commerce.

"To develop, promote and enhance the civic commercial and industrial interests of the city of Alpena, and to extend and improve the social relations of its members."

§410. Home for Boys.

Boys' Home of Kalamazoo.

"The support, care and education of homeless and needy boys; and the promotion of their moral and material interests."

§411. Hospitals.

Bronson Hospital.

"For the purpose of furnishing hospital service, care and medical attendance to sick and disabled persons in the general manner that such services are rendered in hospitals not organized to care for contagious diseases, and not for pecuniary profit."

§412. Humane Societies.

Van Buren County Humane Society.

"The prevention of cruelty to children, animals, birds and fowls, and the inculcation of humane principles."

§413. Medical Societies.

The Tuscola County Medical Society.

"(1) For the association of the physicians of Tuscola County for mutual recognition, fellowship and co-operation;

(2) For the acquisition and dissemination of knowledge per-

taining to medicine, surgery and hygiene among the medical profession of Tuscola County;

(3) For the elevation of the professional, educational and social standing of the profession in Tuscola County;

(4) For the promotion of the public health of this county and the making and executing of stipulated agreements relative to the proper medical, surgical and hygienic management of the indigent poor of Tuscola County, Michigan."

§414. Memorial Associations.

The Ben King Perpetual Memorial Association.

"To erect a suitable monument and perpetually care for the same, the interest on the residue of the fund to be paid annually to the mother of said Ben King during her life time."

§415. Political Clubs.

Michigan Republican Club.

"The maintenance of a club for advancing the interests of the Republican Party in the county of Wayne and State of Michigan."

§416. Social Clubs.

The Howard City Social Club.

"The literary improvement and social enjoyment of, and promotion of good-fellowship among its members and the providing of reading and club rooms."

§417. Articles of Association.—Partnership Association, Limited.—Capital Payable in Cash.

ARTICLES OF ASSOCIATION
of

The subscribers hereto, desiring to form an organization under and by virtue of the provisions of Act No. 191 of the Public Acts of Michigan, of the year 1877 (the same being Chapter 160 of the Compiled Laws of Michigan of the year 1897), entitled, "An act authorizing the formation of Partnership Associations in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances," and all acts amendatory thereof and supplementary thereto, do hereby make, execute and adopt the following Articles of Association, to-wit:

ARTICLE I.

The name of the association hereby formed is.....

ARTICLE II.

The total amount of capital stock of said association is..... dollars divided into shares of the par value of..... dollars per share of which capital stock dollars, being 50% thereof, has been subscribed, and dollars, being 10% of said capital stock has been paid in cash at the date hereof. The portion of said subscriptions remaining unpaid is payable in cash upon call of the board of managers of this association.

ARTICLE III.

The character of business to be conducted by this association is

ARTICLE IV.

The location and principal office of said association shall be in the city of, in the county of, state of Michigan.

ARTICLE V.

The capital stock of this association subscribed, shall not be subject to the restrictive provisions of section four of said Act, as amended, and it is hereby expressly provided that members of this association shall have the right and power to transfer their interests and shares therein, and that when such transfer shall have been made upon the books of this company in accordance with the rules thereof, the transferee thereof shall thereby, *ipso facto*, become a member of this association, and the consent of the other members of said association shall not be necessary thereto.

(Note: This article should be omitted if the restrictive provisions are desired.)

ARTICLE VI.

The duration of said association shall be years from, after and including the date hereof.

ARTICLE VII.

The full names and the place of residence of all of the persons joining in the formation of this association are hereinafter set forth in this article, and the number of shares of stock of said association, and the amount of capital of said association subscribed for by each of them are set opposite their respective names herein as follows, to-wit:

| Name. | Residence. | Number of
Shares. | Amount of cap-
ital Subscribed. |
|-------|------------|----------------------|------------------------------------|
| | | | |

ARTICLE VIII.

The names of the officers of this association, selected in conformity with the provisions of this act, and the respective offices held by each, are as follows:

.....Chairman and Manager,
Secretary and Manager,
Treasurer and Manager.

IN WITNESS WHEREOF, we have, for the purpose of effectuating the organization of said association, and as evidence of our joint and several consent to the terms and provisions hereof, hereunto set our hands and seals this day of, A. D. 19...

.....(L. S.)

(Attach jurat as in Form Sec. 370 ante.)

§418. Articles of Association.—Partnership Association, Limited.—Schedule.

(To be inserted in articles when property is contributed.)

ARTICLE IX.

SCHEDULE.

The property which has been contributed as a part of the capital of this association, and the valuation thereof, which is approved by all of the members subscribing to the capital of this association, together with the names of the parties so contributing said property are as follows, to-wit:

A. B. contributed which is taken at an agreed and approved valuation of \$.....

C. D. has contributed which is taken at an agreed and approved valuation of \$.....

(For method of describing property see Form Sec. 469, post.)

§ 419-§ 422 CORPORATION FORMS AND PRECEDENTS

§419. Form of Schedule Describing Patents Contributed to Partnership Association, Limited.

(*Reh fuss v. Moore*, 7 L. R. A. 663-664.)

"Property contributed by Charles R. Deacon, as follows:

"Letters-Patent of the United States, No. 286,989, for Improvements in Buttonhole Attachments for Sewing Machines, dated October 23, 1883, granted to the 'Banks Buttonhole Machine Company, Limited,' Assignee of Charles M. Banks.

"Right, title and interest in three certain letters-patent of the Dominion of Canada, for the same inventions patented in the United States by letters-patent No. 286,989, dated October 23, 1883, No. 287,213, dated October 23, 1883, and No. 305,657, dated September 23, 1884, said Canadian letters-patent having been granted but not delivered owing to models not having been supplied.

"And which letters-patent, rights and interests are valued at the sum of four hundred and ninety-six thousand six hundred and seventy dollars (\$496,670), by all the members of the association subscribing to the capital stock thereof."

FORMS OF STATEMENT OF PURPOSE IN ARTICLES OF ASSOCIATION OF PARTNERSHIP ASSOCIATIONS, LIMITED,
ORGANIZED UNDER CHAP. 160 C. L. 1897.

(The following forms, taken from the articles of Michigan partnership associations, limited, of record in the office of the Secretary of State, will be found useful as approved precedents, and will, at the same time indicate the wide range of purposes to which these associations have been found adapted.)

§420. Advertising Agencies.

Grandin Advertising Agency, Limited.

"The purpose for which this company is formed, and the character of the business to be conducted by it, is to conduct a general advertising business and all matters germane thereto."

§421. Amusement Companies.

Porter J. White Amusement Company, Limited.

"The character of the business to be conducted by this association is the production of plays."

§422. Brick Companies.

Delton Brick & Tile Company, Limited.

"The business to be conducted by said association is as follows: (I) The manufacture and sale of brick, tile, sewer pipe

or piping, and any other materials that may be manufactured from clay. (II) The purchase and sale of machinery adapted to the manufacture of brick, tile, sewer pipes or piping. (III) To acquire, hold and dispose of real estate and other personal property as may be found necessary and convenient for use in connection with the business of the company."

§423. Brokerage Companies.

American Underwriting Company, Limited.

"The purpose of this company shall be to carry on the business of buying and selling stocks and bonds, the purchasing, investing and disposing of mortgages and real estate interests, and all real and personal securities."

§424. Building Companies.

Elks' Building Company, Limited.

"The business to be carried on by said partnership association is the purchasing, owning, selling, conveying, mortgaging, leasing and dealing in real estate in Bay City, Michigan."

§425. Coal Mining Companies.

The American Coal Mining Company, Limited.

"The character of the business to be carried on by this association shall be as follows:

(a) To own, buy, sell, lease and deal in real estate in Bay County, Michigan, and elsewhere, for the purpose of exploring, testing and mining for coal, clay, shale and other minerals.

(b) To sink shafts, build railroads, sidings and spurs, ditches and roadways, construct the necessary buildings, and do all other things incident to the business of mining, handling and distributing coal, clay and other mineral products."

§426. Commercial Credit and Collection Companies.

The American Commercial & Rating Association, Limited.

"The purpose for which this partnership association is formed and the character of the business to be conducted is the collection of accounts, claims and demands for the members thereof, its subscribers, and such other individuals, firms and corporations as may desire or require its services; to collect and compile reports and information relative to the financial standing, reputation, and responsibility of individuals, firms and corporations, and to furnish rating lists of individuals, firms and corporations to its subscribers."

§ 427-§ 430 CORPORATION FORMS AND PRECEDENTS

§427. Construction Companies.

Michigan Railway Construction Company, Limited.

"The character of the business to be conducted by such association, is the construction and equipment of railways, and especially street railways to be operated by electricity, and the purchase and dealing in all materials and supplies needed in such construction and equipment of railways, and the acquiring, owning and dealing in the stocks and securities of such railways."

Inter-State Construction Company, Limited.

"Constructing buildings, bridges, piers, docks, vessels, canals, pavements, excavations and breakwaters, either in whole or in part, and performing work in, upon, or in connection with, said structures, and structures and undertakings of a similar nature, and said operations shall be carried on anywhere in the United States, or foreign countries."

§428. Correspondence Schools.

College of Furniture Designing, Limited.

"The character of the business to be conducted by the said association will be the teaching of illustrating and designing, including furniture designing, wall-paper, book-cover designing, and studies usually taught in connection with the aforementioned studies, the same to be taught orally and by correspondence."

§429. Creamery Companies.

Centreville Creamery Company, Limited.

"The business to be conducted by this association is the buying and selling of milk and its products, and the manufacture of the same."

§430. Food Companies.

National Cereal Company, Limited.

"The character of the business to be conducted by this association is the manufacture and sale of cereal and other foods and cereal drinks, to acquire and hold such real and personal property as may be necessary or suitable to carry on such business, and to do such other things as may be incidental or necessary to the business of this association."

Postum Cereal Co., Limited. (Paid-up Capital \$5,000,000.)

"The purpose for which this association is formed, and the character of the business to be conducted by it, is of handling, manufacturing and dealing in all kinds of health foods and drinks."

§431. Furniture Companies.

Grand Rapids Piano Case Company, Limited.

"The purpose of this association and the business to be conducted by it are as follows:

The manufacture and sale of piano cases, organ cases, piano player cases, and furniture and other like products manufactured from wood."

§432. Ice Companies.

Co-opertive Ice Company, Limited.

"The purpose of this association is the conducting of the business of buying, harvesting, storing, delivering and selling ice, and the erection of such buildings, the leasing and purchasing of such rights and property as may be necessary therein."

§433. Insurance Agencies.

Ann Arbor Agency Company, Limited.

"This association is formed for the purpose of conducting a general insurance business; to acquire and hold such real and personal property as may be necessary and suitable for the proper conduct of such business; and to do such other things as may be necessary and incidental to the business of insurance agents."

§434. Land Companies.

Sault Ste. Marie Land Company, Limited.

(Stradley v. Cargill Elevator Co., 135 Mich. 367-376.)

"The purpose and business of this association shall be the buying, owning, holding, improving, selling, exchanging, leasing, mortgaging and dealing in real and personal property in the state of Michigan, and elsewhere."

§435. Land and Live Stock Companies.

Michigan Land & Live Stock Company, Limited.

"The purposes of this association are as follows: to buy, hold, improve, lease and sell real property; to engage in the pursuit

§ 436-§ 438 CORPORATION FORMS AND PRECEDENTS

of agriculture, in the development of real property owned by the said association, and to buy, sell, raise, graze and feed cattle, horses, sheep and other domesticated animals."

§436. Livery Companies.

Ishpeming Livery Company, Limited.

"The business of this association shall be that of a general livery business, keeping for hire horses and vehicles, buying and selling horses and vehicles, keeping general sale and boarding stables, doing a general contracting, jobbing, and draying business, and doing any other business which it shall find practical or convenient in connection therewith."

§437. Machinery Companies.

Advance Power & Machinery Company, Limited.

"The purpose for which this association is formed is to build, contract and supervise the construction and erection of, all kinds of machinery, appliances and buildings, and the buying, selling and dealing in machinery and improvements thereon."

Monarch Coupler Co., Limited.

"The character of the business to be conducted by said partnership association shall be the manufacture and sale of car couplers and other railway appliances. The location of said business shall be in the city of Detroit, County of Wayne, and State of Michigan."

§438. Mercantile Companies.

Planters' Tea & Coffee Company, Limited.

"The character of the business to be conducted is, the purchase, manufacture and sale of teas, coffees, spices, baking powder, extracts and grocers' supplies."

Wolverine Fish Company, Limited.

"That the business to be conducted by said association is the catching of fish, the buying and selling at wholesale and retail of all kinds of salt, and fresh and frozen fish of all kinds, and a general fish and cold storage business in all of its branches and departments and that said business is to be carried on in the State of Michigan, and the principal office and place of business of said association shall be located at the city of Detroit, in the County of Wayne, in said State."

The Bay City Supply Company, Limited.

"The business of this association shall be the conducting of a wholesale and retail store for the sale of clothing, hats, caps, gentlemen's furnishing goods, boots, shoes, groceries, hardware, farm implements, jewelry, millinery, and the carrying on of a general store business."

The Greenville Produce & Supply Company, Limited.

"The purpose or purposes of this association are as follows: to buy, sell, ship, market, and conduct a general dealing in hay, grains, wool, potatoes, and all other farm products; and to handle, buy, sell and conduct a general retail dealing in lumber, brick, lime, cement, coal, wood, feed-stuffs, and all kinds of manufactured goods, merchandise, machinery and implements."

§439. Oil Companies.

Livingston Oil Company, Limited.

"The purpose and business of this association shall be to purchase, acquire, lease, and sell leases of, oil lands, and operate, manage, control, buy, and sell oil and gas wells, and to manufacture and sell all products therefrom, and to purchase, hold and convey all such real and personal estate as the purposes of this association shall require, and to do such other acts as may be necessary to carry out the purposes and intent of this association."

§440. Power Companies.

Jackson & Battle Creek Power Company, Limited.

"The character of the business to be conducted by such association is to engage in the business of buying, selling, producing and generating, in any practical manner, electricity for use in the cities, villages and townships of the counties of Jackson and Calhoun, state of Michigan, lying between Jackson and Battle Creek, and to construct transmission lines or other lines, power plants, sub-stations, or other work necessary or incidental for such purposes."

§441. Printing Companies.

R. L. Polk Printing Company, Limited.

"The character of the business to be conducted is, and the association is organized for the purpose of conducting and carry-

ing on, a business of general book and job printing and book binding."

Detroit Lithographing Co., Limited.

"The character of the business to be conducted is that of lithographing, and the location of such business is at the city of Detroit, Wayne County, State of Michigan."

Inter-State Publishing Company, Limited.

"The character of the business to be conducted is the printing, publishing and editing of books, magazines, periodicals and newspapers, job printing, binding, advertising and other lines incidental thereto."

§442. Resort Companies.

Wolf Lake Railway & Resort Association, Limited.

"The character of the business to be conducted by said association is to acquire, construct, own and operate a summer resort, with all necessary appurtenances thereto, on the shores of Wolf Lake, Grass Lake Township, Jackson County, Michigan; also to construct, own and operate a line of railway, electrical or otherwise, between said resort and the nearest convenient point on the line of the Jackson and Suburban Traction Company, in said township, with power to lease, mortgage or sell any or all of its property."

§443. Real Estate Companies.

Blodgett Company, Limited.

"The character of the business to be conducted by said association is, the buying and selling of timber land, and all other kinds of real estate, the buying, selling and manufacturing logs, lumber and other forest products, the buying, holding and selling bonds and other evidences of indebtedness, and the doing of all things of every name and nature incidental to, or necessary for carrying on the business aforesaid."

(This company scheduled property situate in Michigan, Oregon, Mississippi, South Carolina and Louisiana.)

Security Title & Land Company, Limited.

"This association is formed for the purpose of buying, selling and dealing in real estate, in the State of Michigan, and elsewhere in the United States of America."

§444. Recreation Companies.

Marquette Bowling Company, Limited.

"The character of the business to be conducted by the said association is the owning and conducting of one or more bowling alleys in the city of Marquette."

§445. Sanitarium Companies.

Fenton Heights Sanitarium, Limited.

"The purpose and purposes of this association are as follows: For the purchasing, buying and taking in the name of said association all lands and buildings that may be necessary and used in and for the purpose of said association, and of selling and disposing of the same, and for the equipping and running of hospitals, sanitariums, training schools for nurses, and the manufacture and sale, and dealing in of drugs and medicines."

§446. Stock Raising Companies.

The Chippewa Farm Company, Limited.

"The business to be carried on by said partnership association is general farming, stock raising, and the purchase and sale of stock, grain and other farm and forest products at 'Chippewa Farm,' Sheridan Township, Mecosta County, in the State of Michigan."

§447. Stone Companies.

Ida Stone Company, Limited.

"The character of the business to be conducted and carried on by this association is the quarrying, crushing, shipping and using stone of all kinds and the supplying of stone and building material of all kinds to the trade."

§448. Surety Companies.

Hancock Mortgage Loan & Surety Company, Limited.

"The business of the company shall be as follows: (among other things) To undertake the payment of money, or of doing or not doing, performing or not performing, any act, under bond or contract, and to act as surety, or guarantor, on bonds, undertakings, obligations and recognizances, for a consideration."

§ 449-§ 451 CORPORATION FORMS AND PRECEDENTS

§449. Traction Companies.

Michigan Central Traction Company, Limited.

"The character of the business to be conducted by this association is to construct, operate, and maintain an electric railroad in the streets and in the highways, or private ways, within and from the city of Battle Creek, Calhoun County, to and within the city of Lansing, Ingham County, by way of Bellevue, Olivet, Charlotte and Grand Ledge, Eaton County, in the State of Michigan, for the purpose of the transportation of passengers, the United States mail, and merchandise, by electrical power. To construct and maintain the necessary turnouts, side tracks, switches, bridges, culverts and crossings. To purchase and acquire the land necessary for stations, sidetracks, power plants, shops and warehouses. To purchase and acquire water rights, construct dams, erect power houses, stations, shops and warehouses, mechanical and electrical appliances, and to do whatever may be necessary for the construction, operation and maintenance of an electrical railroad within and between the said described places."

§450. Trust Companies.

The Collateral Deposit Company, Limited.

"The business of the association is to act as trustee under trusts created, or to be created, by other corporations, or by individuals; to hold the debentures, or other obligations, securities, or property of other corporations or individuals."

§451. Vineyard Companies.

Lawton Vineyards Company, Limited.

"The character of the business to be conducted by and carried on by this association is as follows: The manufacture and sale of non-fermented fruit juices and kindred products; the carrying on of any and all business incidental or necessary to the principal business of this association: the purchase and sale of such real and personal property as may be necessary to carry on the business of this association."

§452. Form of By-Laws Adapted to Use of Partnership Associations, Limited.

BY-LAWS

of

..... Company, Limited.

1. **MEMBERSHIP.** Any person who shall become the owner of one or more shares of the capital stock of this company, either by direct issue, or by assignment and transfer, shall become a member thereof, provided that in the latter case such person shall become a member of this association only when such transfer shall have been made on the books thereof.

2. **STOCK.** (a) The capital stock of this association shall be of two classes, namely, Common Stock and Preferred Stock, in such proportion and amounts as shall be from time to time authorized by the articles of association or amendments thereof. The certificates evidencing such stock shall be in such form as may be approved by the board of managers.

(b) The holders of said preferred stock shall be entitled to receive in each year, out of the accumulated net profits of the association, in excess of such sum, if any, as shall have been reserved for betterments and working capital, a non-cumulative dividend of 7%, payable quarterly, half yearly, or yearly, as the board of managers may from time to time determine, before any dividend shall be set aside or paid on the common stock of this association. If the accumulated net profits in excess of the sum reserved for betterments and working capital shall not be sufficient to pay, in any year, a dividend of 7% on said preferred stock, then such dividend shall be paid thereon as such excess of accumulated profits will suffice to pay; but the dividends thereon shall not be cumulative, but shall be payable for each year out of the accumulated net profits of such year only, and shall not be payable out of the accumulated profits of any subsequent year or years. Upon dissolution of the association by limitation or in any other manner, and after the payment of its debts, if any, the preferred stock then outstanding shall be redeemed at par, if the net assets of the association, including surplus and accumulated profits, are sufficient. If said assets are not sufficient to redeem said stock at par, then all of said assets, or their proceeds, shall be distributed ratably among the holders of such outstanding preferred stock. If the said assets are more than sufficient

to redeem the outstanding preferred stock at par, all assets remaining after such redemption, or the proceeds of such assets, shall be divided ratably among the holders of the common stock of this association.

(c) Preferred stock, by whomsoever held, may, at the discretion of the board of managers of this association, at any time after five years from and after the 16th day of November, A. D., 1920, be retired, in whole or as to any part thereof, by the association by paying to all or any owner or owners of such preferred stock the par value thereof, together with any declared dividends due thereupon, and upon payment of such retirement purchase price, it shall be the duty of the holder or holders of such preferred stock so to be retired, to deliver such stock and the certificates thereof, duly assigned in writing, to this association.

(d) The holders of preferred stock shall be entitled to such special discounts upon all, or certain portions of, their purchases of supplies from this association, and upon such terms and under such restrictions as shall be, from time to time, fixed by the board of managers.

3. TRANSFERS OF STOCK. All transfers of stock of this association shall be made upon the books of the association by the holder of the shares in person or by attorney, and no transfers shall be deemed complete and binding upon the company until the same shall have been so made, and until the certificate or certificates thereof shall have been surrendered to the company, properly endorsed, and a new certificate or certificates shall have been issued in stead thereof. The stub of each old certificate shall show the number or numbers of the new certificate or certificates issued in place thereof.

4. LOST CERTIFICATE. Any person claiming to have lost any certificate of stock of this association by any means whatsoever, upon making proof of such loss to the satisfaction of the board of managers, and upon indemnifying this association by bond for such amount and with such sureties as shall be approved by the board of managers, shall be issued in lieu of such lost certificate another certificate marked, "Duplicate certificate, original lost," and all reissues of such certificate shall be marked in like manner until the lost certificate shall be recovered and delivered up to this association for cancelation, or until the total destruction of the lost certificate shall have been proved to the satisfaction of said board of managers.

5. ANNUAL MEETING OF STOCKHOLDERS. The annual meeting of the stockholders of this association shall be held on the third Tuesday in in each year hereafter, beginning with the year A. D. 19...., at the hour of o'clock P. M. at the business office of the association in the city of, County, Michigan.

6. QUORUM. A quorum of the stockholders for all purposes, except as otherwise provided by statute, shall consist of a majority of the capital stock at the date of such meeting issued and outstanding.

7. VOTES. Except as herein otherwise provided, each share of the stock of this association issued and outstanding shall entitle the holder thereof, or his lawful representative, to cast one vote on all questions coming before any meeting of the stockholders.

8. PROXIES. Stock of this association may be voted upon by the holders thereof either in person or by proxy. Proxies, to be operative, must be in writing, signed by the principal and filed with the secretary of this association prior to the exercise thereof. Proxies conferred by means of telegram shall be deemed good and sufficient.

9. NOTICE OF ANNUAL MEETING. Written or printed notice of the time and place of holding the annual meeting shall be sent by the secretary of this association to each stockholder annually, by depositing such notice in the mail, with postage fully prepaid, addressed to the last address of such stockholder appearing upon the books of the association; and such notice shall be so mailed not less than fifteen days prior to the holding of such meeting.

10. SPECIAL MEETING OF THE STOCKHOLDERS. Special meetings of the stockholders may be called by the chairman of this association, or by a majority of the board of managers, or by the holders of a majority of the common stock outstanding, by filing with the secretary of this association a written call for such meeting, signed by the person calling the same, which call may be in the following form:

TO THE STOCKHOLDERS OF

Please take notice that a special meeting of the stockholders of the above named association will be held atin the city of....., County, Michigan, on the.....day of....., A. D. 19...., at the hour of.....o'clock in thenoon, for the purpose of considering and taking action upon

(Here insert the object of the meeting.)

Dated:.....

.....
(Here affix signature of the persons by whom the meeting is called).

and upon receipt of such call, the secretary shall cause copies thereof to be made, and shall mail one copy to each stockholder, in the same manner as is herein provided for the mailing of notices of the annual meeting; but it is expressly provided that if such secretary shall neglect or refuse to procure and mail such copies of said call, then and in that event the persons by whom the call is made may perform the duties of the secretary in that respect, and with like effect. Notices of any regular or special meeting of the stockholders of this association shall be sufficient if substantially in the foregoing form. At least fifteen days notice of any such meeting shall be given.

11. ELECTION OF MANAGERS. At each annual meeting the stockholders shall elect by ballot a board of five managers.

When any vacancy shall occur upon the board of managers, such vacancy may be temporarily filled by the board of managers by appointment of any member of this association to hold said office until the next ensuing annual meeting.

12. BOARD OF MANAGERS. The property and business of this association shall be exclusively managed and controlled by said board of managers, without interference, dictation, or power of initiative on the part of the stockholders. Each manager shall be at all times a stockholder of said association. Managers, when acting in that capacity solely, shall not receive compensation for their services. The board of managers by collective, majority action of a quorum thereof shall have full power to fix the salaries of all officers and employees, and to pledge the credit of the company by notes, mortgages, or other-

wise. All managers shall hold their respective offices until their successors shall have been duly elected.

13. **REGULAR MEETING OF THE BOARD OF MANAGERS.** All meetings of the board of managers shall be held at the business office of the association, or at such other place or places as they shall by resolution designate. Regular meetings of the board of managers shall be held on the.....Tuesday of.....in each month hereafter, at.....o'clock in the.....noon. No prior notice of regular meetings of the board shall be requisite.

14. **SPECIAL MEETINGS OF THE BOARD OF MANAGERS.** Special meetings of the board of managers may be called at any time by the chairman, or by any two members of the board. Notice of special meetings shall be mailed by the secretary to each member of the board not less than two days before such meetings shall be held. Said notice shall state the purpose for which the meeting is to be held and the business to be considered thereat. The manner of serving notice calling a special meeting of the board of directors shall be substantially the same as that prescribed in paragraph nine of these by-laws.

15. **QUORUM OF MANAGERS.** A majority of the board of managers, properly convened, shall constitute a quorum.

16. **OFFICERS.** As soon as may be after the annual election of the managers in each year, the board of managers elected thereat shall convene and shall elect by ballot from among its members, a chairman, a secretary and a treasurer who shall be elected for a period of one year and until their successors are elected and qualified. The board of managers may also appoint such other officers and agents to act by and under the direction and control of the board, as it may see fit.

17. **CHAIRMAN.** The Chairman shall preside over all meetings of the stockholders, and of the board of managers, and of all standing committees. He shall be custodian of the bond given by the treasurer; he shall fix his official signature to all stock certificates, conveyances, and transfers of the association's property, and to all other instruments whereunto such signature shall be requisite. He shall have and exercise such other power as shall be from time to time delegated to him by the board of managers, or as shall be incident to his office.

18. **SECRETARY.** The Secretary shall make and preserve in books belonging to the association, records of all meetings of the stockholders and of the board of managers. He shall attend to the preparation and mailing of notices of all meetings whereof notice by mail is herein required. He shall affix his official signature and the seal of this association to all stock certificates issued by this company, and to such other instruments as may require such execution. He shall deliver to his successor in office all of this company's property that shall be in his possession at the end of his term of office, and he shall perform all other duties required of him by the board of managers.

19. **TREASURER.** The treasurer of this association shall keep full and accurate records of all receipts of moneys and of all disbursements thereof, in books belonging to the association, and shall deposit all moneys and other valuable effects in such depository as shall be designated by the board of managers. He shall disburse the funds of the company as shall be ordered by the board of managers, taking proper vouchers therefor. He shall prepare and present to the stockholders at each annual meeting, and to the board of managers whenever they shall by resolution request it, a full and complete statement of the financial affairs of this corporation. He shall, when required by the board of managers, file with the chairman of this association a bond, in such amount and with such sureties as shall be approved by the board of managers, which bond shall be conditioned for the faithful discharge of his duties as treasurer of this association. He shall perform such other duties as shall be delegated to him by the board of managers.

20. **JOINDER OF OFFICES.** Any two of the offices herein provided may be held and exercised by one person.

21. **AUDITING COMMITTEE.** Whenever they shall deem it expedient to do so, the stockholders of this association may, at any annual meeting, or at any special meeting called for that purpose, appoint a committee of three stockholders to audit the books of said association. Any auditing committee so appointed shall have full power to demand and examine at the business office of said association all of the files, books and records of said company. The report of such committee shall be reduced to writing, and shall be signed by each member thereof, and shall be presented at the next ensuing meeting of the stockholders occurring after such audit shall have been completed.

22. VICE-PRESIDENTS. The stockholders of this association shall have power to appoint from among the members thereof such number of vice-presidents as shall be deemed proper, and said vice-president so appointed shall be entitled, through courtesy, to be called upon in the order of their appointment to preside over any meeting of the stockholders from which the chairman of this association may be absent; said office of vice-president shall be purely honorary and shall be conferred and held as an expression of appreciation of services or influence exercised in behalf of this association.

23. PROMISSORY NOTES. All promissory notes made by this association shall be executed in the corporate name by the Chairman and Treasurer thereof.

24. CORPORATE SIGNATURE. The execution of any instrument made by this association may be in the following form:

.....LIMITED,
By.....
(Official designation.)

25. CORPORATE SEAL. This corporation shall have a corporate seal of such design as may be from time to time approved by the board of managers, and the secretary shall be custodian thereof, with full power to affix the same to such instruments as shall require its use, either by law, by resolution, or by custom.

26. LIEN. This association shall have, and it hereby expressly reserves, a lien upon all shares of capital stock thereof, both common stock and preferred stock, now issued or hereafter to be issued or reissued, which lien shall inure and obtain for the benefit of this association to secure unto it prompt payment at maturity of all debts and obligations now contracted, or incurred, or which may hereafter be contracted, or incurred, to this association from any holder or holders of such shares.

27. NOTICE OF LIEN. Whenever this association shall, by its board of managers, elect to enforce its lien upon the shares of any stockholder for any obligation due from such stockholder to this association, the secretary of this association shall give to such stockholder at least thirty days' notice, that, unless such claim shall be paid, said stock of such stockholder will be advertised and sold at public auction to the highest bidder, and the proceeds of such sale applied, as far as may be, in payment thereof and of the costs of such advertisement and sale, which

notice shall be in writing, signed by the secretary, and shall be deemed duly served when deposited for transmission through the mail with postage fully prepaid, addressed to the last address of such stockholder appearing upon the books of the association.

28. ENFORCEMENT OF LIEN. After giving such notice as is provided in the last preceding paragraph, the stock of such stockholder so indebted to this association may, at any time after the expiration of the period of thirty days provided for in said notice, be advertised at the city of County, Michigan, in the same manner as is provided by the laws of said state of Michigan for the advertisement of constable sales upon execution, and at the time and place at which such sale is advertised to occur (or at a later time to which such sale may be adjourned) such stock, or so much thereof as shall be found necessary, shall be sold at public auction to the highest bidder, and the proceeds thereof shall be used to satisfy, as far as may be, the obligations of such stockholder to this association, together with the costs incident to such advertisement and sale, and such stock so sold shall then be transferred by appropriate entries on the books of this association, and the old certificates outstanding, so far as they shall represent shares so sold, shall cease and be null and void in the hands of any and all holders thereof whatsoever, and new certificates shall be issued, evidencing said shares to the purchaser or purchasers through and under such sale.

29. FISCAL YEAR. The fiscal year of this corporation shall end on the last secular day of in each year hereafter, beginning with the year A. D. 19

30. AMENDMENTS. The rules hereinbefore set forth, and herein designated as by-laws, are adopted for the management of this association and shall only be amended by the consent in writing of three-fourths in number and value of interest of the shareholders of this association at an annual meeting thereof, provided, that notice of any and all proposed amendments shall be given at the annual meeting then next preceding, unless such notice shall be thereafter waived in writing signed by all stockholders entitled to participate in adopting or rejecting such proposed amendment.

§453. Form of Articles of Association.—Telephone and Messenger Service Companies.

ARTICLES OF ASSOCIATION.

of

.....

We, the undersigned, desiring to become incorporated under the provisions of Act No. 129, of the Public Acts of 1883 entitled "An Act for the organization of Telephone and Messenger Service Companies" and the acts amendatory thereof and supplementary thereto, do hereby make, execute and adopt the following articles of association, to-wit:

ARTICLE I.

The name assumed by this association, and by which it shall be known in law, is

ARTICLE II.

The place where the principal business office in this State is to be located is at.....in the county of.....

ARTICLE III.

The capital stock of the corporation hereby organized is the sum ofdollars.

The number of shares into which the capital stock is divided is.....of the par value of.....dollars each.

The amount of capital stock subscribed is the sum of.....dollars.

The amount of said stock actually paid in at the date hereof is the sum of.....dollars.

ARTICLE IV.

The number of directors to manage the affairs of the corporation shall be.....

ARTICLE V.

Names of the persons to act as first directors are as follows:
.....

ARTICLE VI.

The term of existence of this corporation is fixed at
years from the date hereof.

ARTICLE VII.

The names of the stockholders, their respective residences,
and the number of shares of stock subscribed for by each are
as follows.

| Names. | Residence. | No. of Shares. |
|--------|------------|----------------|
| | | |

IN WITNESS WHEREOF, We, the parties hereby associating,
for the purpose of giving legal effect to those articles, here-
unto sign our names, this day of
A. D. 19

Names.

.....
(Attach jurat as in Form Sec. 370 ante.)

**§454. Form of Articles of Association.—Mining, Smelting,
Etc., Companies.**

ARTICLES OF ASSOCIATION.
of the

.....

We, the undersigned, desiring to become incorporated under
the provisions of Act 113, of the Public Acts of 1877, entitled
“An act to revise the laws providing for the incorporation of
Companies for mining, smelting, or manufacturing iron, copper,
silver, mineral coal, and other ores or minerals, and to fix the
duties and liabilities of such corporations,” approved May 11,
1877, and the acts amendatory thereof or supplementary thereto,
do hereby make, execute, and adopt the following articles of
association, to-wit:

ARTICLE I.

The name assumed by this corporation and by which it shall
be known in law is

ARTICLE II.

This corporation is organized for the following purposes:
.....

ARTICLE III.

The amount of capital stock of the corporation hereby organized is the sum of.....dollars, and the number of shares thereof is.....at twenty-five dollars each.

ARTICLE IV.

The amount of cash actually paid in on the capital stock is the sum of.....dollars, and the cash value of any property, real or personal, conveyed to the corporation contemporaneously with its organization is.....dollars.

ARTICLE V.

The names of the stockholders, their respective places of residence, and the number of shares held by each are as follows:

| Names. | Residence | No. of Shares. |
|--------|-----------|----------------|
| | | |

ARTICLE VI.

The place where the business office of this corporation is located, without the limits of the State of Michigan, is..... and the place where the office for the transaction of business within the State of Michigan is located, is.....

ARTICLE VII.

The county or counties in the State of Michigan where the business is to be carried on.....

ARTICLE VIII.

The number constituting the Board of Directors is..... and the Directors for the first year are

ARTICLE IX.

The term of existence of the corporation is years.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this.....day of....., A. D. 19...., in Duplicate.

(Attach jurat as in Form Sec. 370 ante.)

§§ 455, 456 CORPORATION FORMS AND PRECEDENTS

§455. Waiver of Notice of First Meeting of Stockholders.

BE IT KNOWN, That we, being all of the subscribers to capital stock of a corporation organized under and by virtue of the provisions of Act No..... of the Public Acts of Michigan, of the year....., and all acts amendatory thereof and supplementary thereto, and being all of the stockholders of said corporation, do hereby waive notice of the time, place and purposes of the first meeting of the stockholders of said corporation, and do hereby fix the day of, 19..., at the hour of o'clock, m. as the time, and....., in the..... of....., County of....., State of Michigan, as the place, for said meeting; and this waiver shall apply with equal force to all adjournments of said meeting.

Dated 19....

.....
.....
.....

(This waiver should be made and entered upon the record of the corporation.)

§456. Form of Notice of Annual Meeting of Stockholders.

PLEASE TAKE NOTICE, That the annual meeting of the stockholders of, a corporation, will be held at, in the of..... County of, State of Michigan, on the day of, 19..., at the hour of ... o'clock in thenoon, for the purpose of electing a board of directors for the ensuing year, and receiving and acting upon the reports of officers, and for the transaction of such other business as may properly come before the meeting.

Dated, 19....

.....Secretary.

§457. Form of Notice of Special Meeting of Stockholders.

PLEASE TAKE NOTICE, That a special meeting of the stockholders of, a corporation, will be held at, in the of, County of, State of Michigan, on the day of, 19..., at the hour of o'clock in thenoon, for the purpose of (Here insert specifically the purposes of the meeting.)

Dated, 19....

..... Secretary.

§458. Form of Proxy.

BE IT KNOWN, That I,, of the of, County of, State of, do hereby appoint and constitute of, my true and lawful attorney, for me and in my name, place and stead, to vote upon the stock owned by me or standing in my name, at the annual (or special) meeting of the stockholders of a corporation, to be held at, in the of County of, State of Michigan, on the day of, 19..., or on such other day or days as said meeting may be thereafter held by adjournment, or otherwise, according to the number of votes I am or may then be, entitled to cast, hereby granting said attorney full power and authority to act for me in the transaction of any and all business which may come before said meeting as fully as I could do if personally present, with full power of revocation and substitution, hereby ratifying and confirming all that my said attorney or substitute may do in my name, place and stead.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of, 19....

..... (L. S.)

In presence of:

.....

§§ 459, 460 CORPORATION FORMS AND PRECEDENTS

§459. Form of Notice of Change of Status.

(Sparrow v. E. Bement & Sons, 142 Mich. 441-450.)

NOTICE OF DISSOLUTION.

(Name of Corporation)
(Postoffice Address)
(Date)

We, the undersigned, being a majority of the last Board of Directors of corporation doing business under the provisions of Act No. 232, Public Acts of 1903, and the acts amendatory thereof, hereby give notice in accordance with the requirements of Section 12 of said Act, that said corporation has been dissolved by

[Here insert one of the following statements:

"Has been dissolved by process of law," or

"Has been dissolved by expiration of its term of existence," or

"Has been dissolved by sale of its property and franchises at private sale," or

"Has been dissolved by sale of its property and franchises at mortgage sale," or (if a foreign corporation)

"Has ceased to carry on business in the state of Michigan."
(Or as the case may be).]

.....
Majority of Directors.

(Corporate Seal)

(Note: This form need not be acknowledged. Good practice would suggest that the corporate seal be impressed, but this is not obligatory. When filed, the notice is regarded as consummating a *de facto* dissolution, and no further annual reports are thereafter required by the Department of State.)

§460. Form of Pre-Organization Subscription.

(Holliday v. Wright, 134 Mich. 608-610.)

The undersigned desire to form a corporation to be organized under the manufacturing and incorporation laws, being Act 232 of the Public Acts of Michigan of 1885, as amended, with a capital stock of \$150,000, to be called the Charles Wright Chemical Company, for the purpose of carrying on, in Detroit and elsewhere, the business of manufacturing and dealing in dentifrices, and to that end hereby agree, each in consideration of

the agreements of the others, to join in the organization, and to subscribe for and take stock in such a corporation to the amounts, par value, set after our respective names. All details of said organization, other than the foregoing, may be determined by a majority in interest of the signers hereof.

.....

§461. Form of Subscription Agreement—After Organization.

I hereby subscribe for shares of the par value of \$..... per share, of the capital stock of Company, a Michigan corporation, for which shares I agree to pay to said company, in cash, the full par value of \$....., when and in such manner as the same shall be called in by the board of directors of said corporation.

Dated19....

.....(L. S.)

§462. Statutory Form of Corporate Acknowledgment.

(See C. L. of 1897, Sec. 9020.)

STATE OF MICHIGAN, }
 COUNTY OF } ss.

On this day of, 19..., before me appeared A. B., to me personally known, who, being by me duly sworn, did say that he is the of, a corporation organized and existing under the laws of the State of Michigan, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said A. B. acknowledged said instrument to be the free act and deed of said corporation.

.....Notary Public.

My commission expires, 19....

§463. Form of Corporate Acknowledgment Combining in One Jurat Acknowledgment by Several Officers.

COUNTY OF }
 STATE OF MICHIGAN, } ss.

On this day of, 19..., before me, a Notary Public in and for said county, appeared A. B., C. D.

and E. F., to me personally known, who being by me severally duly sworn, did depose and say, each for himself, that they are respectively and in the order last above named, the President, Secretary and Treasurer of, a corporation organized and existing under the laws of the State of Michigan, and that the foregoing instrument by them severally subscribed, was by them signed and sealed in behalf of said corporation by authority of the board of directors thereof, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was executed for the intents and purposes therein set forth, and that said instrument is by them and by each of them acknowledged to be the free act and deed of said corporation.

. Notary Public.
My Commission expires 19 . . .

§464. Form of By-Law Prescribing the Manner of Giving Notice of Intent to Foreclose a Statutory Lien Upon . . the Shares of a Stockholder.

(See Act 232 of 1903, Secs. 16, 24 and 25.)

Whenever this corporation shall have a lien by law upon the shares of any stockholder thereof for any indebtedness due from such stockholder to this corporation, the secretary, when instructed so to do by a resolution adopted by the board of directors, shall give notice, in the name of this corporation, to such indebted stockholder that, unless said stockholder shall pay his said indebtedness to this corporation within three months from the time of giving such notice, then and in the event of such non-payment, this corporation will proceed to sell and transfer the stock of such stockholder in this corporation (or so much thereof as shall be necessary) and to apply the proceeds of such sale as provided by law, which notice shall be deemed duly served at the time when the same is deposited for transmission through the mail, with postage fully prepaid, addressed to such indebted stockholder at his or her last address as the same appears upon the books of this corporation, and such service by mail is hereby expressly authorized, and said notice shall be deemed sufficient in form if it shall be substantially as follows:

To (name of indebted stockholder):
Please take notice that you are indebted to this corporation upon (state nature of indebtedness)
in the principal sum of dollars, with interest there-

upon at the rate of per centum per annum, payable annually, from the day of, 19..., all of which principal sum, together with accrued interest thereupon, is now due and unpaid over and above all set offs and recoupments, and that demand of payment of said principal sum and interest is hereby expressly made by this corporation.

Please take further notice that under and by virtue of the statute in such case made and provided, this corporation has and asserts a lien to the full amount of your said indebtedness, upon the (insert number) shares of the capital stock of this corporation now standing in your name upon the books thereof, and that, in default of payment of such indebtedness within three months from the date of service of this notice by mailing (as in the by-laws of this corporation provided) this corporation will, after due statutory advertisement thereof, proceed to sell for cash at public auction to the highest bidder therefor, so much of said stock of this corporation appearing upon the books thereof in your name, as shall be required to pay in full your said indebtedness to this corporation, together with interest accrued to the date of said sale, and together with the necessary costs of sale, and if the sale of the entire stock above mentioned shall not be sufficient to pay in full the claim of this corporation thereupon, said corporation will credit the amount received for such stock, less the said costs of sale, upon said total accrued indebtedness, and will then, at the discretion of the board of directors of said corporation, proceed to collect the remainder of said indebtedness by a proper action for that purpose.

Dated 19....

..... (Name of corporation).....

By..... (Signature of Secretary).....

Secretary.

(Corporate Seal.)

§465. Form of Published Notice of Sale of Stock Under Statutory Lien.

(See Act 232 of 1903, Sec. 25.)

NOTICE OF SALE OF STOCK.

NOTICE IS HEREBY GIVEN, That, a corporation organized and existing under the provisions of Act

No. 232 of the Public Acts of Michigan of the year 1903, and all acts amendatory thereof and supplementary thereto, will offer for sale and will sell at public auction to the highest bidder at in the of County of, State of Michigan, on the day of, 19..., at the hour of o'clock in thenoon, under and by virtue of the statutory lien of said corporation upon the shares of stock of its stockholders for indebtedness due to said corporation from such stockholders, shares (or so many thereof as shall be necessary) of the capital stock of said corporation, of the par value of dollars per share, fully paid and non-assessable, which shares so to be sold, now stand upon the books of said corporation in the name of and are the property of, and are so to be sold to pay and satisfy, as far as may be, a matured existing indebtedness in the principal amount of dollars, together with interest thereupon at the rate of per centum per annum from the day of, 19..., up to and including the day of said sale, due from said to this corporation, together with the necessary costs of said sale.

Dated, 19....

.....(Name of corporation).....

ByPresident.

.....Secretary.

§466. Notice of Sale of Pledged Shares.

DEFAULT HAVING BEEN MADE in payment of a certain promissory note made by in the principal sum of dollars, dated at on the day of, 19..., bearing interest at the rate of per cent per annum, upon which obligation there is due, unpaid and owing at the date of this notice the sum of dollars over and above all lawful credits, set-offs and recoupments, and as collateral security to which obligation, to secure prompt payment thereof at maturity, I hold in pledge shares of the par value of dollars per share of the capital stock of Company, a Michigan corporation, standing on the books of said corporation in my name as pledgee;

NOW, THEREFORE, notice is hereby given that, by virtue of the power of sale incident to said pledge, I shall offer for sale, and shall sell, at public auction to the highest bidder, at in the of, County of, State of Michigan, on the day of, A. D. 19..., beginning at o'clock in thenoon of said day, all of said shares of stock, or such part thereof as may be necessary, for the purpose of producing the amount of said indebtedness, both principal and interest, and the reasonable costs and expenses of said sale.

Dated, 19....

.....
Pledgee.

§467. Foreign Corporations.—Application for Admittance to do Business in Michigan.

....., 19....

To the Secretary of State,
Lansing, Michigan.

..... a foreign corporation organized and existing under and by virtue of the laws of the State of, hereby makes the following declaration, pursuant to an Act of the Legislature of Michigan, entitled, "An act to prescribe the terms and conditions on which foreign corporations may be admitted to do business in Michigan," approved June 6, 1901, as amended:

FIRST. The location of its principal office is
The location of its principal place or places of business
The names and addresses of the principal officers are

SECOND. The location of its principal office and the principal place of business in Michigan

The names and addresses of the officers or agents of the company in charge of its business in Michigan are

THIRD. The authorized capital stock of said corporation is Dollars (\$.....).

FOURTH. The total value of the property owned and used by the company in its business, (giving the location and general character, and stating separately the value of its tangible property, of its cash and credits, its franchises, patents, trade-marks, formulas, good will), is

FIFTH. The value of property owned and used in Michigan and where situated, showing different kinds as in item fourth

SIXTH. The total amount of business transacted during the preceding year

SEVENTH. The amount of business, if any, transacted in Michigan

EIGHTH. The particular purpose or particular kind of business for which the company desires to be admitted is the following

NINTH. Its corporate term will expire

IN WITNESS WHEREOF, Said has caused its corporate seal to be affixed and its name to be hereunto attached this day of, A. D. 19....

(CORPORATE SEAL.)

By.....

STATE OF }
COUNTY OF } ss.

..... being duly sworn, depose and say, that they are officers, to-wit, the..... and respectively of; that the foregoing statement, executed in the name and on behalf of said corporation, and under its corporate seal, is true.

Sworn to before me and subscribed in my presence, this day of, A. D. 19....

.. .. .

Notary Public.

(NOTARIAL SEAL.)

My commission expires, 19...

OFFICE OF THE SECRETARY OF STATE.

Lansing, Michigan,, 19....

From the foregoing statement made by this said, and from other facts coming to my knowledge, I find the proportion of the capital stock of the company represented by its prop-

erty and business in Michigan to be per cent of its authorized capital stock, to-wit, the sum of dollars, on which the franchise fee of one-half of one mill on each dollar will be the sum of dollars.

.....
Deputy Secretary of State.

CORPORATE RECORDS
OF

FIRST MEETING, OF COMPANY.

A Corporation Organized Under the Provisions of Act No. 232 of the Public Acts of Michigan of 1903, as Amended.

(The following record—from which the names have been omitted—is a copy of the record of organization meetings, prepared by author of this work for a manufacturing corporation organized under his direction. By permission of the company, the entire record with some minor exceptions noted, is herein reproduced as a practical guide in the formation of similar corporations. For convenience in indexing, section numbers have been herein added to the various parts of the record. It embraces section 468 to 472, inclusive. The reason for presenting the record of an actual company is, that it affords an example of *practice* rather than of *theory*.)

§468. Minutes of First Meeting of Stockholders.

The subscribers hereto, being all of the shareholders of Company, a Michigan corporation, do hereby severally waive any and all notice of the first meeting of the stockholders of said corporation, and of all adjournments thereof, and do hereby consent and agree that said first meeting of stockholders may and shall be held at the office of said company in the city of, County, State of Michigan, on the eighth day of June, A. D. 1908, at four o'clock in the afternoon of said date.

IN TESTIMONY WHEREOF, we have hereunto set our hands this eighth day of June, A. D. 1908.

(Signatures.)

Pursuant to the foregoing waiver of notice, the first meeting of stockholders of Company was held at said office of said company in the city of, County, Michigan, on the day and hour in said waiver of notice mentioned. There were present in person, being all of the shareholders of said corporation.

..... was chosen temporary chairman and was chosen temporary secretary.

The articles of association of said Company, a copy of which is attached to this record and marked Document A, were read, and upon motion of, seconded by, said articles of association were unanimously approved and adopted and the president of said company, when elected, was instructed by the same motion and vote to cause the original articles of association to be recorded in the office of the Secretary of State of the state of Michigan, and in the office of the County Clerk in and for the county of, in said state.

A draft of by-laws of and for said Company was thereupon presented for the action of the meeting by who moved their adoption. Said by-laws consisted of twenty-six consecutive sections, and were read and adopted section by section, and were thereupon unanimously adopted as a whole and ordered spread upon this record. Pursuant to said order a true, original, certified copy of said by-laws is annexed hereto, marked Document B, and is made a part hereof.

An election of directors of said company was immediately held by written ballot. and were appointed tellers by unanimous consent. Upon taking said ballot the said tellers reported as follows:

.....received 1000 votes,
received 1000 votes,
received 1000 votes,
received 1000 votes,
received 1000 votes.

Each of the persons above named having received unanimous vote of all of the shares of stock of said corporation, the chairman declared said duly elected directors of said Company, to hold said office until the next annual election, and until their respective successors shall have been elected.

The following resolution was introduced by, seconded by

WHEREAS,, for a period of about twenty-five years last past has been the sole owner of and has successfully conducted that certain unincorporated concern known as Company, and

WHEREAS, said unincorporated Company is possessed of merchandise, office furniture and fix-

tures, shop furniture and fixtures, machinery, and tools, pattern flasks and follow boards, bills receivable, accounts receivable and real estate, both useful and vitally necessary to the contemplated business and purposes of this corporation; and

WHEREAS, each of the shareholders of this corporation is personally familiar with the property of said unincorporated Company, and is acquainted with the value thereof; and

WHEREAS, said property, exclusive of trade mark, trade name, patent and established trade is of the reasonable value of ninety thousand dollars (\$90,000); and

WHEREAS, said, the sole owner of said unincorporated Company has offered to sell, assign, transfer and set over unto this corporation the trade mark, trade name, patent, established trade, merchandise on hand, office furniture and fixtures, shop furniture and fixtures, pattern flasks and follow boards, machinery and tools, and also bills and accounts receivable to the amount of fifteen thousand two hundred thirteen dollars and seventy-five cents (\$15,213.75) together with lawful conveyance in fee simple, free from encumbrance, of the real estate now occupied by said company, described as lots number three (3), four (4), five (5) and also ten (10) feet off the south end of lot number two (2), all being subdivisions of lot number sixty (60) of the city of, in said county of, as appears by the recorded plat thereof, all of which assets said offers to so assign and convey to this corporation at the price of ninety thousand dollars (\$90,000), payable to him in fully paid, non-assessable capital stock of this corporation at par value:

NOW THEREFORE, BE IT AND IT IS HEREBY RESOLVED, that the stockholders of this corporation recommend that the board of directors thereof negotiate for and purchase from said the property so offered at the price and upon the term above set forth, provided said board of directors shall deem such purchase proper and expedient.

The foregoing resolution was unanimously adopted.

A recess was then taken, subject to the call of the chair, to enable the organization of the board of directors and the transaction of such business as might properly come before said board at this time.

After a brief recess, President reconvened

said stockholders' meeting. The secretary thereupon reported the purchase by this corporation of the property offered to this corporation by, as set forth in the minutes of the meeting of said board of directors, and pursuant to and in accordance with the previous recommendation in that behalf made by the stockholders of this company, whereupon, on motion of seconded by the action of the board of directors in the purchase of said property was unanimously ratified and confirmed.

The minutes of said stockholders' meeting, having been then prepared as hereinbefore set forth, were read and approved.

There being no further business to come before the meeting of stockholders, the same was adjourned without day.

.
Secretary.

Attest,

.
President.

§469. Articles of Association.

ARTICLES OF ASSOCIATION

OF

. COMPANY.

(Document A.)

We, the undersigned, desiring to become incorporated under the provisions of Act No. 232, of the Public Acts of 1903, entitled "An Act to revise and consolidate the laws providing for the incorporation of manufacturing and mercantile companies or any union of the two, and for the incorporation of companies for carrying on any other lawful business, except such as are precluded from organization under this act by its express provisions, and to prescribe the powers and to fix the duties and liabilities of such corporations," and the acts amendatory thereof and supplementary thereto, do hereby make, execute and adopt the following articles of association, to-wit:

ARTICLE I.

The name assumed by this association, and by which it shall be known in law, is Company.

ARTICLE II.

The purpose or purposes of this corporation are as follows:

The manufacture, purchase, sale, dealing with and dealing in, furnaces, heating plants, and heating and heat regulating machines, systems, devices, tools and appliances, together with all of the fixtures, furniture, tools, machinery, supplies, ornaments, accessories and repairs incident thereto or useful therewith.

ARTICLE III.

The principal place at which operations are to be conducted is at the city of, in the county of, state of Michigan.

ARTICLE IV.

The capital stock of the corporation hereby organized is the sum of one hundred thousand (\$100,000) dollars.

ARTICLE V.

The number of shares into which the capital stock is divided is one thousand (1000) of the par value of one hundred (\$100) dollars each.

ARTICLE VI.

The amount of capital stock subscribed is the sum of one hundred thousand (\$100,000) dollars.

ARTICLE VII.

The amount of said stock actually paid in at the date hereof is the sum of one hundred thousand (\$100,000) dollars, of which amount ten thousand (\$10,000) dollars has been paid in cash, and ninety thousand (\$90,000) dollars has been paid in other property, an itemized description of which, with the valuation at which each item is taken, is as follows, viz.:

The following described property, both real and personal, at the date hereof is situate in said city of, and consists of and includes, except as hereinafter reserved, all assets of every name, nature and description hitherto, on the date hereof, used in or incident to the furnace manufacturing and selling business, which business, for many years past, and at the

date of transfer of said property to this corporation, was owned and actively conducted by said at said city under the assumed name of Company, an unincorporated, going concern.

ITEM I.

REAL ESTATE, consisting of lots numbered three (3), four (4), five (5), and also ten (10) feet in width off the south side of lot numbered two (2), all being subdivisions of lot numbered sixty (60) of said city of, as appears by the recorded plat thereof, which item is taken at a valuation of\$ 9,866.80

ITEM II.

OFFICE FURNITURE, FIXTURES, APPLIANCES, STATIONERY AND SUPPLIES of every description, situate upon the premises above described and consisting principally of desks, safe, filing cabinets, typewriters, catalogs and circulars, which item is taken at a valuation of\$ 1,257.64

ITEM III.

SHOP FURNITURE AND FIXTURES of every description, situate upon the premises above described, and consisting principally of work-benches, steel racks and elevators, which item is taken at a valuation of\$ 645.25

ITEM IV.

PATTERNS, FLASKS AND FOLLOW-BOARDS of every description, situate upon the premises above described, and being all of the same incident to the business above mentioned, which item is taken at a valuation of\$ 6,767.00

ITEM V.

MACHINERY AND TOOLS of every description, situate at the premises above described and incident to and used in the business above mentioned, consisting principally of engine, motor, boilers, fans, crane, line-shafting, pulleys, belting, lathes, saw, tinner's tools and workmen's kits, which item is taken at a valuation of\$ 6,362.14

ITEM VI.

MERCHANDISE, including all manufactured goods, goods in process of manufacture, and raw material, situate at the premises above described, and in the places of storage of this corporation in said city of, and consisting principally of furnaces, registers, register boxes, ventilators, pipes, elbows, damper collars, dampers, collars and caps, foundry facings and large quantities of sheet steel, asbestos, coke and coal, which item is taken at a valuation of\$ 49,887.42

ITEM VII.

BILLS RECEIVABLE AND ACCOUNTS RECEIVABLE, unmatured and to fall due, to the net amount of \$15,213.75, and no more, which accounts are incident to the said business transferred to this corporation, and have been assigned with collection guaranteed to this corporation by said, which item is taken at a valuation of\$ 15,213.75

ITEM VIII.

TRADE MARK, TRADE NAME, PATENT, ESTABLISHED TRADE AND GOOD WILL of said unincorporated Company, as a going concern, the name, assets and business of which concern this corporation is formed, primarily, to take over, own, manage and continue, which item is taken without cost to this corporation, and is therefore taken *without valuation*\$.00

| | |
|------------------------------------|--------------|
| Total value of property taken..... | \$ 90,000.00 |
| Cash paid in | \$ 10,000.00 |
| Total paid in | \$100,000.00 |

(Detailed description and valuation as of the date of June 1, 1908, of all of the property hereinbefore described appear upon the regular books of said unincorporated Company, now in possession of this corporation at its said principal office, and applicable to the date hereof, which books are open to public inspection.)

ARTICLE VIII.

The office in the state of Michigan for the transaction of business shall be kept at the city of, in the county of, in said state.

ARTICLE IX.

The term of existence of this corporation is fixed at thirty (30) years from the date hereof.

ARTICLE X.

The names of the stockholders, their respective residences and the number of shares of stock subscribed for by each are as follows:

| Names. | Residence. | No. of Shares. |
|--------|------------|----------------|
| | | 976 shares |
| | | 1 share |
| | | 10 shares |
| | | 3 shares |
| | | 10 shares |
| | | <hr/> |
| | | 1000 |

IN WITNESS WHEREOF, We, the parties hereby associating, for the purpose of giving legal effect to these articles, hereunto sign our names, the eighth day of June, A. D. 1908.

(Signatures.)

STATE OF MICHIGAN, }
COUNTY OF } ss.

On this eighth day of June, 1908, before me, a Notary Public in and for said county, personally appeared, known to me to be the persons named in, and who executed the

foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

.....
Notary Public.

My commission expires August 31, 1908.

STATE OF MICHIGAN, }
COUNTY OF } ss.

..... being duly sworn, do depose and say that they are three of the organizers of the..... Company, whose articles of association are hereto attached; that they know the property described in Article VII of such articles of association and taken in payment for capital stock, and that the same has been actually transferred to such corporation, and further say that said property is of the actual value of more than ninety thousand dollars.

And further say not.

(Signatures.)

Subscribed and sworn to before me this eighth day of June, A. D. 1908.

.....
Notary Public.

My commission expires August 31, 1908.

§470. By-Laws.

BY-LAWS
OF

.....COMPANY.

(Document B.)

1. ANNUAL MEETING.—The annual meeting of the stockholders of this corporation shall be held on the first Thursday in February, in each year, beginning with the year A. D. 1909, and at the hour of seven-thirty o'clock P. M. at the office of the said company in the city of,, County, Michigan, or at such other hour or place as may be selected from time to time by the board of directors and mentioned in the notice of such annual meeting; and, at each annual meeting the stockholders shall elect by ballot a board of five directors, who shall each be and remain, during the term of their said office, stockholders of this corporation, and who shall be elected for a term of one year, and to hold such office until their successors shall have been elected.

2. **QUORUM.**—A quorum of the stockholders shall consist of the holders of a majority of the capital stock of this corporation, at the time outstanding, being present in person or by proxy.

3. **VOTES.**—Each share of stock of this corporation issued and outstanding shall entitle the holder thereof, or his lawful representative, to cast one vote on all questions coming before any meeting of the stockholders.

4. **PROXIES.**—Stock of this corporation may be voted upon by the holder thereof, either in person or by proxy. Proxies, to be operative, must be in writing, signed by the principal and filed with the secretary of this corporation.

5. **NOTICE OF ANNUAL MEETING.**—Notice of the time and place of holding the annual meeting shall be sent by the secretary of this corporation to each stockholder annually, by depositing such notice in the mail, with postage fully prepaid, addressed to the last address of such stockholder appearing upon the books of the corporation; and such notice shall be so mailed not less than five days prior to the holding of such meeting.

6. **SPECIAL MEETINGS OF THE STOCKHOLDERS.**—Special meetings of the stockholders may be called by the president of this corporation, or by a majority of the board of directors, or by the holders of a majority of the capital stock outstanding, by filing with the secretary of this corporation a written call for such meeting, signed by the persons calling the same, which call may be in the following form:

TO THE STOCKHOLDERS OF
COMPANY:

Please take notice that a special meeting of the stockholders of the above named corporation will be held at in the city of,
..... County, Michigan, on the
day of, A. D. 19..., at the hour of
..... o'clock in thenoon, for the purpose
of considering and taking action upon

(Here insert the object of the meeting.)

Dated

(Here affix signature of the official or
persons by whom the meeting is called.)

and upon receipt of such call, the secretary shall cause copies thereof to be made, and shall mail one copy to each stockholder, in the same manner as is hereinbefore provided for the mailing of notices of the annual meeting; but it is expressly provided that if such secretary shall neglect or refuse to procure and mail such copies of said call, then and in that event the persons by whom the call is made may perform the duties of the secretary in that respect, and with like effect. Notice of any regular or special meeting of the stockholders of this corporation shall be valid if substantially in the foregoing form. Printed or typewritten notices shall be deemed sufficient.

7. **MEETINGS OF THE BOARD OF DIRECTORS.**—Meetings of the board of directors may be called at such time and place and in such manner as the board may by resolution prescribe. In the absence of such resolution, said board may be convened at any time upon call of the president, or upon written call of a majority of the board, and upon such period of notice to each member thereof as shall be deemed reasonable, according to circumstances, by the person or persons by whom such meeting is called.

8. **QUORUM OF DIRECTORS.**—A majority of the board of directors, properly convened, shall constitute a quorum.

9. **OFFICERS.**—As soon as may be after the annual election of directors in each year, the board of directors elected thereat shall convene, and it shall elect from among its members a president, a vice-president, a secretary and a treasurer. The board of directors may also appoint such other officers and agents, to act by and under the direction and control of the board of directors as said board may see fit.

10. **PRESIDENT.**—The president shall preside over all meetings of the stockholders and of the board of directors of this corporation. He shall be custodian of the bond given by the treasurer. He shall have all powers usually incident to the office of general manager, and shall be the general manager of this corporation. He shall have and exercise such additional powers as may be from time to time delegated to him by by-laws or by resolution of the board of directors.

11. **VICE-PRESIDENT.**—The vice-president shall have and exercise all of the powers and duties of the president during the absence, disability or disqualification of the president.

12. **SECRETARY.**—The Secretary shall make and preserve in books belonging to the corporation, records of all meetings of the stockholders and of the board of directors. He shall attend to the preparation and mailing of notices of all meetings whereof notice by mail is herein required. He shall affix his official signature to all stock certificates issued by this corporation, and to such other instruments as may require such signature. He shall deliver to his successor in office all corporate property that shall be in his possession at the end of his term of office, and shall perform all other duties required of him by these by-laws and all amendments thereto, or by the board of directors.

13. **TREASURER.**—The treasurer of this corporation shall keep full and accurate records of all receipts of moneys and of all disbursements thereof, in books belonging to the corporation, and shall deposit all moneys and other valuable effects to the credit of this corporation and by and in its corporate name in such depository as shall be designated by the board of directors. He shall disburse the funds of the company as shall be ordered by the board of directors, taking proper vouchers therefor. He shall prepare and present to the stockholders at each annual meeting, and to the directors whenever they shall by resolution request it, a full and complete statement of the financial affairs of this corporation. He shall, when required by the board of directors, file with the president of this corporation a bond, in such amount and with such sureties as shall be approved by the board of directors, which bond shall be conditioned for the faithful discharge of his duties as treasurer of this corporation. The treasurer of this corporation shall perform such other duties as shall be delegated to him by these by-laws and all amendments thereof, or by the board of directors.

14. **JOINER OF OFFICES.**—Any two of the offices herein provided may be held and exercised by one and the same person.

15. **VACANCIES.**—In case of vacancy occurring in any office or upon the board of directors, such vacancy may be filled, until the annual meeting then next ensuing, by appointment of any stockholder of this corporation thereto, which appointment shall be made by a quorum of the board of directors, duly convened.

16. **ORDERS FOR PAYMENT OF MONEY.**—All checks, drafts and other orders for the payment of money shall be signed by

the secretary and treasurer of this corporation, or by such other officers or agents as the board of directors may designate for that purpose.

17. EXECUTION OF OTHER INSTRUMENTS.—All promissory notes, written contracts, releases, discharges, transfers, mortgages, conveyances and other written instruments, except as herein otherwise provided, made by this corporation shall be executed to the corporate name thereof by the president and the treasurer, who shall sign the same in their official capacity and who shall each have full authority to affix the corporate seal thereto.

18. CORPORATE SIGNATURE.—The execution of any instrument made by this corporation may be in the following form:

.....COMPANY,
By.....
(Official designation.)

19. CORPORATE SEAL.—This corporation shall have a corporate seal and the treasurer shall be custodian thereof, with full power to affix the same to such instruments as shall require its use, either by law, by resolution or by custom. The device of said seal shall be a circle bearing the corporate name, and within the circle the words "Corporate Seal." For purposes of identification, an impression of the seal adopted shall be kept upon the minute book of this company, and shall be certified by the secretary.

20. NOTICE OF LIEN.—Whenever this corporation shall have a lien by law upon the shares of any stockholder for indebtedness due from such stockholder to this corporation, the secretary may give to such stockholder at least three months' notice that, unless such indebtedness shall be paid, said stock of such stockholder will be advertised and sold at public auction to the highest bidder, and the proceeds of such sale applied, as far as may be, in payment of such debt and the costs of such advertisement and sale, which notice shall be in writing, signed by the secretary, and shall be deemed duly served when deposited for transmission through the mail with postage fully prepaid, addressed to the last address of such stockholder appearing upon the books of this corporation.

21. FISCAL YEAR.—The fiscal year of this corporation shall end on the fifteenth day of January in each year hereafter beginning with the year A. D. 1909.

22. STOCK CERTIFICATES.—The shares of stock of this corporation shall be evidenced by certificates numbered consecutively from 1 upward, and in such form as shall be adopted by the board of directors. Said stock certificates, prior to their issue, shall be kept in bound books, attached to suitable stubs, and in no case shall any such certificate be signed in blank by any officer of this corporation. It shall be the duty of the secretary to keep upon the stub (or securely attached thereto) of each certificate issued, a written receipt for such certificate signed by the person in whose name such certificate was issued, or by such person's authorized agent. When any certificate shall have been surrendered up for reissue, the secretary shall write or stamp across the face thereof the word "Cancelled," together with the date of surrender, authenticated by his initials, and he shall immediately securely attach the surrendered certificate so marked, to the Stock Certificate Book stub from which said certificate was originally taken. It is expressly declared to be the duty of the secretary to keep upon the stub of each stock certificate issued, the date of issue, number of shares, and the name of the person to whom issued, together with such other data as shall clearly describe the certificate, and no stock certificate shall be detached from its stub until such memoranda shall have been completed.

23. TRANSFER OF STOCK.—All transfers of stock of this corporation shall be made upon the corporate books by the holder of the shares in person, or by attorney, and no transfer shall be deemed complete and binding upon the company until the certificate or certificates evidencing the shares transferred shall have been surrendered to the company, properly endorsed, and a new certificate or certificates shall have been issued in the name of the transferee. No transfer of stock shall be made upon the books of the company during a period of ten days next preceding the date set herein for the holding of any annual meeting of the stockholders.

24. LOST CERTIFICATES.—Any person claiming to have lost any certificate of stock of this corporation, by any means whatsoever, upon making proof of such loss to the satisfaction of the board of directors, and upon indemnifying this corporation by bond in such amount and with such sureties as shall be approved by the board of directors, shall be issued, in lieu of such lost certificate, another certificate, marked, "DUPLICATE

CERTIFICATE. ORIGINAL LOST." and all certificates evidencing reissues and transfers of the shares represented by such lost certificate shall be marked in like manner, until the lost certificate shall be recovered and delivered up to this corporation for cancellation, unless said marking requirements shall be waived by resolution of the board of directors.

25. *DIVIDENDS.—Dividends, when earned and declared upon the stock of this corporation shall be payable at such time or times, and in such manner, as shall be provided by resolution of the board of directors. The board of directors are hereby empowered to apply all, or so much as they shall see fit, of any dividend or dividends at any time accrued to any stockholder of this corporation in payment, in whole or in part, of any matured indebtedness due and owing from such stockholder to this corporation.

26. AMENDMENTS.—The stockholders of this corporation may, by a majority vote of a quorum present at any annual meeting, or at any special meeting having that purpose mentioned in the notice thereof as one of said meeting's objects, alter, amend or repeal these by-laws, or any of them.

I,, Secretary of Company, do hereby certify that the foregoing by-laws, consisting of sections numbered consecutively from 1 to 26, both numbers inclusive, as herein recorded, are the full, true, exact and authentic by-laws adopted by the stockholders of said corporation at the first stockholders' meeting thereof, held on the 8th day of June, A. D. 1908.

IN WITNESS WHEREOF, I have hereunto set my hand, this 8th day of June, 1908.

.....
Secretary.

§471. Minutes of First Meeting of Board of Directors.

MINUTES OF FIRST MEETING OF BOARD OF
DIRECTORS.
of

.....COMPANY
The subscribers hereto, being all of the directors of
..... Company, a Michigan corporation, do
hereby severally waive any and all notice of the first meeting

of the board of directors of said corporation, and of all adjournments thereof, and do hereby consent and agree that said first meeting of said board of directors may and shall be held at the office of said company, in the city of County, State of Michigan, on the eighth day of June, A. D. 1908, at 4:30 o'clock in the afternoon of said day.

IN WITNESS WHEREOF, we have hereunto set our hands this eighth day of June, A. D. 1908.

(Signatures)

Pursuant to the foregoing waiver of notice, the first meeting of the board of directors of Company was held at the office of said company, in the city of, County, Michigan, on the day and hour in said waiver of notice mentioned. There were present in person, being all of the members of said board of directors. was chosen temporary chairman, and was chosen temporary secretary. An election was immediately held with the following result:

..... was chosen President of said corporation;
 was chosen Vice-President of said corporation;
 was chosen Secretary of said corporation;
 was chosen Treasurer of said corporation;

The result of said election was announced by the chairman as above set forth, each of said persons having been unanimously elected.

It was moved by and seconded by that the First National Bank of Michigan, be selected as the depository of the funds of this corporation. Carried.

Cash subscriptions to the amount of ten thousand dollars (\$10,000) were thereupon paid over to the treasurer by the following named persons, and in the amounts set opposite their respective names, to-wit:

| | |
|--------|----------|
| | \$ 7,600 |
| | 100 |
| | 1,000 |
| | 300 |
| | 1,000 |
| <hr/> | |
| Total, | \$10,000 |

The following resolution was introduced by
seconded by

WHEREAS, is the sole owner of all of the assets of that certain unincorporated concern doing business at, Michigan, under the assumed name of Company; and

WHEREAS, said has offered to sell and convey by warranty deed free from encumbrance, to this corporation, certain real estate now used by said unincorporated Company consisting of lots numbered three (3), four (4), five (5) and also ten (10) feet off the south end of lot numbered two (2), all being sub-divisions of lot numbered sixty (60) of the city of, County, Michigan, as appears by the recorded plat thereof, at a price of nine thousand eight hundred sixty-six dollars and eighty cents (\$9,866.80); and

WHEREAS, said has offered to sell, transfer and deliver unto this corporation all of the office furniture, fixtures, appliances, stationary and supplies of said unincorporated Company, at a price of one thousand two hundred fifty-seven dollars and sixty-four cents (\$1,257.64); and

WHEREAS, said has offered to sell, transfer and deliver unto this corporation all of the shop furniture and fixtures of every description of said unincorporated Company at a price of six hundred forty-five dollars and twenty-five cents (\$645.25); and

WHEREAS, said has offered to sell, transfer and deliver unto this corporation all of the patterns, flasks and follow boards of said unincorporated Company, at a price of six thousand seven hundred sixty-seven dollars (\$6,767); and

WHEREAS, said has offered to sell, transfer and deliver unto this corporation all of the machinery and tools of every description of said unincorporated.....

Company at a price of six thousand three hundred sixty-two dollars and fourteen cents (\$6,362.14); and

WHEREAS, said has offered to sell, transfer and deliver unto this corporation all of the merchandise, including manufactured goods, goods in process of manufacture and raw material of said unincorporated Company, at a price of forty-nine thousand, eight hundred eighty-seven dollars and forty-two cents (\$49,887.42); and

WHEREAS, said has offered to sell, transfer and deliver unto this corporation bills receivable and accounts receivable of said unincorporated Company, to the amount of fifteen thousand two hundred thirteen dollars and seventy-five cents (\$15,213.75), to be selected by the members of this board of directors from the mass of the bills receivable and the accounts receivable of said unincorporated Company, which accounts and bills receivable so selected said personally guarantees in writing shall be collected within one year from and after this date at the full net amount of fifteen thousand two hundred thirteen dollars and seventy-five cents (\$15,213.75), and which accounts are now unmatured and to fall due, and are so offered at a price of fifteen thousand two hundred thirteen dollars and seventy-five cents (\$15,213.75); and

WHEREAS, said has offered, in connection with the purchase of the items of property above mentioned, to sell, transfer and deliver unto this corporation without charge, and in consideration of purchase by this company of the items above mentioned, all and singular the trade mark, trade name, patent, established trade and good will of said unincorporated Company, of which he is at the date hereof, the sole owner; and

WHEREAS, said items of property are all deemed necessary for the attainment of the purposes for which this corporation has been organized; and

WHEREAS, the purchase of all of said property has been recommended by a resolution of the stockholders of this corporation, provided this board shall deem such purchase proper and expedient; and

WHEREAS, such purchase is deemed by this board to be proper and expedient, and the prices above set forth are deemed fair and reasonable; and

WHEREAS, said has offered to accept in full payment for said property capital stock of this corporation to be issued fully paid and non-assessable and to be by him accepted at par value; and

WHEREAS, said has subscribed for nine hundred seventy-six (976) shares of the capital stock of this corporation, of which he has heretofore paid in in cash seven thousand six hundred dollars (\$7,600), leaving a balance of ninety thousand dollars (\$90,000) now payable upon his said subscription; and

WHEREAS, the valuation of the property above described at the prices fixed thereupon aggregates the sum of ninety thousand dollars (\$90,000);

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED, *First*. That this corporation shall accept, and does hereby accept, the property above described at an aggregate purchase price of ninety thousand dollars (\$90,000) made up of the items and at the valuation above set forth;

Second. That the warranty deed of said real estate and the bill of sale of said personal property, duly executed and tendered to this corporation at this time by said, be and the same are hereby accepted and approved;

Third. That by acceptance of said warranty deed and bill of sale this corporation acknowledges full, final payment of all of the subscription of said to the capital stock thereof;

Fourth. That the president and secretary of this corporation shall be and they are hereby authorized to execute and deliver under their hands and the seal of this corporation unto the said, his lawful representatives or assigns, certificates of stock of this corporation to the amount of nine hundred seventy-six (976) shares, which shares are hereby declared to be fully paid and non-assessable;

Fifth. That copies of said warranty deed and said bill of sale, together with a copy of the assignment of the patent above mentioned, shall be entered upon the record of this meeting for permanent reference.

An aye and nay vote having been called for upon the foregoing resolution, the secretary called the roll of the directors who respectively voted as hereinafter set forth:

.....voted aye,
voted aye,
voted aye,
voted aye,
 (The vendor) did not vote

Thereupon the chair declared the resolution adopted.

The form of stock certificate, a copy of which is attached to this record and marked Document C, was presented to the board of directors by the Secretary, and was by unanimous consent approved and adopted as the form of stock certificate to be used by this corporation.

A copy of said warranty deed is entered herein and marked Document D.

A copy of said bill of sale is entered herein and marked Document E.

A copy of said assignment of patent is entered herein and marked Document F.

The minutes of this meeting having been prepared as above set forth, said minutes were read and approved.

There being no further business to come before said meeting, the same was adjourned without day.

..... Secretary
 Attest,
 .. President.

§472. Certificate of Corporate Seal.

CERTIFICATE OF CORPORATE SEAL.

I, secretary of
 Company, a Michigan corporation, do
 hereby certify that the corporate seal, an
 (Seal impressed.) impression of which is set opposite hereto
 upon this page, is the true and authentic
 corporate seal of said company adopted by
 the board of directors thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand this
 8th day of June, 1908.

..... Secretary.

Note: Documents C, D, E and F, being ordinary commercial forms of a stock certificate, warranty deed, bill of sale and assignment of patent, respectively, are omitted herefrom, although forming a part of the original record.

PART TWO—Miscellaneous Corporation Forms

§473. Warranty Deed.

THIS INDENTURE, made this day of in the year of our Lord one thousand nine hundred and between of the of county of, State of, being a corporation organized and existing under and by virtue of the laws of the state of, and having its principal place of business at the of county of state of, as party of the first part, and of as part... of the second part.

WITNESSETH, that the said party of the first part, for and in consideration of the sum of Dollars, to it in hand paid by the said part... of the second part, the receipt whereof is hereby confessed and acknowledged, does by these presents grant, bargain, sell, remise, release, alien and confirm unto the said part... of the second part, and heirs and assigns, forever, all certain piece.. or parcel.. of land, situate and being in the of county of and State of Michigan, known and described as follows, to-wit:

Together with all and singular, the hereditaments and appurtenances thereunto belonging or in any wise appertaining; TO HAVE AND TO HOLD the said premises, as herein described, with the appurtenances unto the said part... of the second part, and to heirs and assigns, forever. And the said party of the first part, for itself, its successors and assigns, does covenant, grant, bargain and agree to and with the said part.... of the second part.... heirs and assigns, that at the time of the ensealing and delivery of these presents it is well seized of the above granted premises in fee simple; that they are free from all incumbrances whatever, and that it will and its successors and assigns shall forever WARRANT AND DEFEND the same against all lawful claims whatsoever.

IN WITNESS WHEREOF, the said has caused these presents to be signed in its name by its (*President and Secretary, or as the case may be*) and sealed with its corporate seal, the day and year first above written.

(NAME OF CORPORATION)

By..... President.

..... Secretary.

(CORPORATE SEAL.)

Signed, Sealed and Delivered in presence of

.....

STATE OF MICHIGAN, }
 COUNTY OF } ss.

On this day of, 19..., before me, a Notary Public in and for said county, appeared A. B. and C. D., to me personally known, who, being by me severally duly sworn, did depose and say, each for himself, that they are respectively and in the order last above named, the President and Secretary of, a corporation organized and existing under the laws of the State of Michigan, and that the foregoing instrument by them severally subscribed, was by them signed and sealed in behalf of said corporation by authority of the board of directors thereof, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was executed for the intents and purposes therein set forth, and that said instrument is by them and by each of them acknowledged to be the free act and deed of said corporation.

.....

Notary Public.

My commission expires 19....

§474. Mortgage.

THIS INDENTURE, WITNESSETH, That a corporation organized and existing under and by virtue of the laws of the state of and having its principal place of business at the of, county of, state of, as first party... does hereby mortgage and warrant unto of as second part..., and to heirs and assigns forever, all that certain piece of land situate in the of, county of and state of described as follows:

TO SECURE THE REPAYMENT to the said second part..., of the sum of dollars, according to the tenor and effect of certain promissory note executed by said first party to said second part..., to which these presents are collateral.

And the said first party hereby expressly covenants and agrees to pay the same accordingly.

And the said first party further covenants and agrees to pay or cause to be paid, as often as the same shall become due and payable, all taxes and assessments of whatever nature, which may be lawfully assessed or levied on the said premises.

And the said first party further covenants and agrees to insure and keep insured the buildings erected and to be erected on the premises above described, in amount and with insurers satisfactory to the said second part..., and to cause such insurance to be made payable to said second part..., as mortgage interest may appear, and to deliver the policy or policies of insurance into the possession of the said second part....

And in default of the payment of such taxes, assessments, or insurance, or any part thereof, then the said second part... may pay the same, and the sum or sums so paid shall be a lien on the premises above described, secured by these presents, due forthwith, and bearing interest at the rate of per cent until paid.

And in case default be made in the payment of any installment of principal, or of the interest, taxes, assessments, or insurance, or any part thereof, on any day whereon the same is made payable as above expressed, and should the same remain due and unpaid for the space of days, thenceforth the aforesaid principal sum of Dollars, together with all interest, taxes, assessments, and insurance unpaid, shall, at the option of said second part..., executors, administrators, or assigns, become and be due and payable forthwith, notice of the said option being hereby expressly waived.

And in case any proceedings are taken to foreclose this mortgage, said first part... shall pay to said second part..., Dollars, as an Attorney or Solicitor's fee, in addition to all other costs.

And in case of the non-payment of the said sum of Dollars, or of the said interest, taxes, assessments, or insurance as above expressed, all of the indebtedness secured hereby shall thereupon fall due immediately, and it shall be lawful for said second part..., heirs, executors, administrators, or assigns, and the said first party does hereby empower and authorize the said second part..., heirs, executors, administrators, or assigns, to then forthwith sell and convey the said premises at public vendue, according to the statute in such

case made and provided, and out of the proceeds of such sale to pay and retain the debt aforesaid, with all interest, taxes, assessments, and insurance unpaid, rendering the surplus money (if any there should be) to the said first party..., its successors or assigns.

IN WITNESS WHEREOF, the said first party has caused its name and seal to be hereunto affixed this day of in the year one thousand nine hundred and

(NAME OF CORPORATION)

By.....
President.

.....
Secretary.
(CORPORATE SEAL.)

Signed, Sealed and Delivered in presence of

.....
.....

(Attach same form of jurat as in Sec. 473.)

§475. Assignment of Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that a corporation organized and existing under and by virtue of the laws of the state of, and having its principal place of business at the of in the county of, state of, as party of the first part, for and in consideration of the sum of dollars, lawful money of the United States of America, to it in hand paid by of the of, county of, state of, as part... of the second part, the receipt whereof is hereby acknowledged, has sold, assigned and transferred, and hereby does sell, assign and transfer to the said part... of the second part, all the right, title, and interest of the said part... of the first part in and to a certain Real Estate Mortgage, dated the day of, in the year nineteen hundred, made by as mortgagor.. to said corporation, as mortgagee, and recorded in the Register's office of the county of, state of, in Liber of Mortgages, on page ...

Signed, sealed and delivered the day of

A. D., by said corporation, acting through its duly authorized officers.

(NAME OF CORPORATION)

By.....
President.

Secretary.

(CORPORATE SEAL.)

In presence of

.....
.....

(Attach same form of jurat as in Sec. 473.)

§476. Release of Part of Mortgaged Premises.

THIS INDENTURE, made this day of in the year one thousand hundred and, between a corporation organized and existing under and by virtue of the laws of the state of and having its principal place of business at the of county of, state of, as part... of the first part, and of the of, county of, state of, as part... of the second part:

WHEREAS, said, by Indenture of Mortgage, bearing date the day of one thousand hundred and for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements, of which the lands hereinafter described are part, unto, which said mortgage was recorded in the Register's Office, for the County of and State of, in Liber of Mortgages, on page

AND WHEREAS, the said party of the first part, at the request of the said part... of the second part, has agreed to give up and surrender the lands hereinafter described unto the said part... of the second part, and to hold and retain the residue of the mortgaged lands as security for the money remaining due on said mortgage.

NOW THIS INDENTURE WITNESSETH, That the said party of the first part, in pursuance of the said agreement, and in consideration of dollars, to it duly paid at the time of ensealing and delivery of these presents, the receipt whereof is

hereby acknowledged, has granted, released, quit-claimed, and set over, and by these presents does grant, release, quit-claim and set over, unto the said part... of the second part, all that part of the said mortgaged lands situate and being in the of, County of and state of Michigan, known and described as follows:

Together with the hereditaments and appurtenances thereunto belonging, and all the right, title and interest of the said party of the first part, of, in and to the same, to the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified may remain to the said party of the first part.

TO HAVE AND TO HOLD, the lands and premises hereby released and conveyed, to the said part... of the second part, heirs and assigns, to only proper use, benefit and behoof, forever, free, clear, and discharged of and from all lien and claim, under and by virtue of the indenture of mortgage aforesaid.

IN WITNESS WHEREOF, The said party of the first part has caused its name and corporate seal to be hereunto affixed by its duly authorized officers, this day of, in the year one thousand hundred and

(CORPORATE NAME.)

By.....

President.

.....

Secretary.

(CORPORATE SEAL.)

Signed, Sealed and Delivered in presence of

.....

.....

(Attach same form of jurat as in Sec. 473.)

§477. Discharge of Mortgage.

KNOW ALL MEN BY THESE PRESENTS, that a corporation organized and existing under and by virtue of the laws of the state of, and having its principal place of business at the of and state of

Do HEREBY CERTIFY, that a certain indenture of mortgage bearing date the day of one thousand

nine hundred made and executed by as party of the first part, to said corporation, as party of the second part, and recorded in the Register's Office for the county of and State of Michigan, in Liber of Mortgages, on page ... on the day of one thousand nine hundred, is fully paid, satisfied and discharged.

IN WITNESS WHEREOF, said corporation has, by its duly authorized officers, hereunto set its name and seal the day of, one thousand nine hundred

(NAME OF CORPORATION.)

By.....

President.

Treasurer.

(CORPORATE SEAL.)

Signed, Seal and Delivered in presence of

.....
.....

(Attach same form of jurat as in Sec. 473.)

§478. Contract.

THIS AGREEMENT, made this day of, 19..., by and between, a corporation organized and existing under and by virtue of the laws of the state of, and having its principal place of business at the of, in the county of, and state of, party of the first part, and of the of in the county of, and state of, part.. of the second part, for and in consideration of the mutual covenants and agreements herein contained, and in consideration of Dollars by said part... of the part to said part... of the part paid at the date hereof, receipt whereof is hereby acknowledged.

WITNESSETH:

First. That said party of the first part hereby covenants and agrees to and with said part.. of the second part, that (etc.)

Second. That said part... of the second part hereby covenant.. and agree.. to and with said party of the first part, that (etc.)

Third. That the covenants and agreements herein set forth shall be equally binding upon the successors and assigns of the said party of the first part, and upon the heirs, executors, administrators and assigns of the said part... of the second part.

IN WITNESS WHEREOF, the parties hereto have hereunto set their names and seals the day and year first above written.

(NAME OF CORPORATION.)

By.....

President.

.....

Secretary.

(CORPORATE SEAL.)

..... (L. S.)

§479. Form of Mortgage Deed of Trust.

(Including Form of Bond.)

THIS MORTGAGE DEED OF TRUST, made this day of, A. D., 19..., between the Company, a corporation organized and existing under and by virtue of the laws of the state of, and having its principal office at the city of, county of, state of, hereinafter designated as "said company," as party of the first part, and, trustee, of the city of, county of, state of, hereinafter designated as "said trustee" as party of the second part.

WITNESSETH:

THAT, WHEREAS, the said company was duly incorporated under the general laws of the state of, on the day of, A. D. 19..., pursuant to act No. of the Public Acts of the state of, approved on the day of, 19..., and all acts amendatory thereof and supplementary thereto, and has been duly organized and has a capital stock of two million dollars (\$2,000,000) divided into twenty thousand (20,000) shares of the par value of one hundred dollars (\$100) each, all of which shares have been and are fully paid up at the par value thereof; and

WHEREAS, said company is the sole owner in fee simple and free from all encumbrances, of all of the certain lands and other property hereinafter described; and

WHEREAS, said company now purposes to purchase other and further property, both real and personal, and to erect and construct thereupon and therewith a factory property equipped for the manufacture of the products in which said company is, by its charter, authorized to deal; and

WHEREAS, said company has full authority under the laws of said state of to issue its bonds, without limit by law, and to secure such bonds by a mortgage upon the property and franchises of said company; and

WHEREAS, at a regular meeting of the stockholders of said company duly called and held at the general office of said company at the city of, county of state of, on the day of A. D. 19..., pursuant to the charter and by-laws of said company in such case made and provided, a resolution was duly adopted by said stockholders authorizing the issue of the bonds of said company to the amount of one million dollars (\$1,000,000), and of the character and description hereinafter set forth, to be secured by a mortgage deed of trust of the same terms and conditions as are embodied in the within indenture, which said resolution was unanimously adopted by all of the stockholders present in person or by proxy at said meeting, which said stockholders so present and voting were then and there the holders of more than a majority of all of the shares of the capital stock of said company, and

WHEREAS, the board of directors of said company, by virtue of the power in them vested by law, and in conformity with said resolution adopted by said stockholders, did, at a duly called meeting of the board of directors of said company, held on the day of, A. D. 190..., adopt the form of the mortgage deed of trust herein set forth, according to the tenor hereof, and did adopt the form of bonds and coupons secured by said mortgage, and the trustee's certificate upon said bonds, which bonds are numbered from one (1) to two thousand (2,000), both numbers inclusive, and are of the face value of five hundred dollars (\$500) each, and the form of said bonds, coupons, and trustee's certificate, excepting the serial numbers of said bonds, are in words and figures as follows, to-wit:

UNITED STATES OF AMERICA.

State of

No. \$500.

THECOMPANY.

First Mortgage, Five Per Cent Gold Bond.

KNOW ALL MEN BY THESE PRESENTS, that
Company, a corporation duly organized and existing under the
laws of the state of is justly indebted to.....,
as trustee for the bond holders, or bearers, or if this bond shall
be registered, then to the registered holder thereof, in the sum
of

FIVE HUNDRED (\$500) DOLLARS

which indebtedness said Company promises
to pay in gold coin of the United States of America, of the
present standard of weight and fineness, on the
day of A. D. 19..., at Bank,
in the city of, State of, with interest
thereupon from the day of,
A. D. 19..., at the rate of per centum per annum, to
be paid in like gold coin semi-annually, on the first day of July
and on the first day of January, in each year hereafter, according
to the tenor of the coupons annexed hereto, and upon presenta-
tion and surrender of said coupons as they shall fall due, until
this bond and all interest accrued thereupon shall have been paid
in full. If the obligor, or its successors, shall make default in
payment of any semi-annual interest on this bond for a period
of six months from the day when such interest becomes due,
then the principal herein, shall at the election of said trustee, his
successor or successors, become due and payable, and may at
once be enforced against said obligor, or its successors, as pro-
vided in the mortgage deed of trust by which this bond is secured.

This bond is one of a series of two thousand (2000) bonds of
even date herewith, of the face value of five hundred dollars
(\$500) each, and amounting in the aggregate to one million
dollars (\$1,000,000), all of which bonds are equally secured by
and subject to all of the provisions of that certain duly recorded
mortgage deed of trust, forming a first mortgage lien upon all
of the property, both real, personal and mixed, including all
franchises and assets, now owned, or which may hereafter be
acquired, by said obligor, or its successors which bonds and
mortgage deed of trust are executed and delivered in pursuance

of resolutions duly adopted by the stockholders and by the board of directors of said obligor company.

This bond may, at the option of said obligor, be redeemed at any time after the expiration of five years from the date hereof, and before maturity of the same, by payment of one hundred five dollars (\$105) for each one hundred dollars (\$100) of the principal hereof, together with all interest accrued and unpaid at the time of such redemption.

This bond shall pass by delivery, or it may be registered on the books of said trustee, in which event, after proper endorsement and registration hereon, it shall forthwith be transferable only upon such books and by the owner in person, or by his lawful representative, unless the last preceding transfer shall have been to bearer, in which case it shall again be transferable by delivery. This bond shall be susceptible of successive registrations and transfers to bearer. Registration of this bond shall not, however, restrain the transfer of the coupons hereof by delivery.

This bond shall not be valid unless the certificate endorsed hereupon shall have been signed by the said trustee.

IN TESTIMONY WHEREOF, the said company has caused its corporate seal to be hereunto affixed, and these presents to be signed in its name and behalf by its president, and countersigned by its secretary, and the coupons attached hereunto to be authenticated by the fac-simile signature of its treasurer, this day of A. D. 19....

.....COMPANY,

ByPresident.

Attest:

.....Secretary.

TRUSTEE'S CERTIFICATE.

It is hereby certified that this bond is one of the series of two thousand (2,000) bonds described in the within mentioned mortgage deed of trust.

.....
Trustee.

FORM OF COUPON.

No. \$.....

On the first day of, 19...., the
Company will pay to bearer in gold coin of the United States
of America, dollars, at the
Bank, in the city of, state of,
being six months interest due that day on the first mortgage
..... per cent gold bond to which this coupon appertains.
Bond No.

.....
Treasurer.

NOW THEREFORE, THIS INDENTURE WITNESSETH, that said
company, for the better securing of the payment of the principal
and interest of said bonds, and in consideration of the sum of
one dollar (\$1.00), lawful money of the United States of
America to it paid by said trustee, the receipt
whereof is hereby acknowledged, has granted, bargained, sold,
enfeoffed, aliened, released, conveyed, confirmed and assigned,
and by these presents in pursuance of every power and authority
in this respect enabling, doth hereby grant, bargain, sell, alien,
enfeof, release, convey, confirm, assign, transfer and set over
unto said trustee, his successor or successors, all and singular
the right, title, interest and estate of said
Company, in and to all and entire the property of said com-
pany, both real, personal, and mixed, including all franchises,
lands, ways and rights of way, and all personal property, by it
now possessed, or by it hereafter during the life of the lien
hereby created, acquired, wheresoever the same may be situate
or found, and which, as to the real estate above mentioned, and
by said company now possessed, is described as all that certain
piece or parcel of land situate and being in the
of, county of, and state of
....., described as follows, to-wit:

.....
together with and including all and singular the right, title, in-
terest and estate of said company in and to all (here describe
the personal property, if any, to be covered by the mortgage),
wherever situate or found, together with all franchises, stocks,
choses in action, contracts, leases, liens, licenses, rights and privi-
leges now owned by said company or by it hereafter, during the
life of this lien, acquired: it being the express purpose of this
mortgage deed of trust to create a lien in favor of the bond

holders hereunto upon any and all property, both real, personal and mixed, acquired after the date hereof, to the same extent and for the same purposes as the mortgage lien is created hereby upon all of the property by said company now owned;

TO HAVE AND TO HOLD all and singular the above described property, premises and appurtenances, and every part thereof, unto the party of the second part, and his successor or successors, to his and their own proper use, benefit and behoof forever.

In trust, nevertheless, for the several persons, firms and corporations to whom the bonds described in and secured by this indenture shall be issued and delivered, or who shall at any time hereafter, be the owners and holders thereof in the manner herein contemplated and provided, without preference of one bond over another by reason of its priority of issue, or otherwise; that is to say, that upon the trusts for the purposes and with the power and authority hereinafter set forth, to-wit:

This indenture further witnesseth, that, in consideration of the premises, the parties hereto do hereby, for themselves, their successors and assigns, covenant and agree to and with each other as follows, each party hereto covenanting for the matter and thing to be done and permitted to be done by him or it respectively:

FIRST.—The said company shall punctually pay to the holders of the bonds aforesaid, or to the holders of any bonds that may be issued by said company and accepted in lieu, renewal or substitution of the same respectively, the interest thereon half yearly, as the same shall become due and payable, according to the terms of said bonds set forth, and on the days therein respectively mentioned for the payment of the same in accordance with the tenor of the coupons to said bonds annexed, and shall also, on the day and at the time and place mentioned in said bonds, or whenever the said principal sums of said bonds shall, according to the provisions thereof, become due and payable, fully and entirely pay and satisfy, as aforesaid, the whole of said bonds, principal and interest, without further delay, and without deduction from either said principal, or said interest, for any tax or taxes, which said company may, by any present or future law or laws of the United States, or of the state of be required to pay or retain on account of, or from, the said principal or interest for any purpose whatsoever; the said company hereby agreeing to pay all of said tax or taxes. And the

said company hereby covenants to promptly pay all taxes and assessments, extraordinary as well as ordinary, of every kind and nature levied and imposed upon the said mortgaged property, or upon any part thereof, so as to prevent sale thereof for non-payment of said taxes or assessments. And the said company shall also promptly pay any and all final judgments recovered against it in any court where an appeal has not been taken or perfected and where an execution shall have issued upon such judgment. And the said company shall also sufficiently insure, in good and responsible insurance companies, all of the property now or at any time hereafter embraced within the lien of this mortgage, and such insurance shall be of such nature, kind and amount as shall be satisfactory to said trustee, and said company shall promptly pay the premium or premiums for such insurance.

SECOND.—If said company, its successors or assigns shall at any time hereafter, after demand, make default, or refuse, neglect or omit, for a period exceeding six months to pay the half yearly interest on the bonds secured hereby, or upon any of them, or refuse, neglect or omit for a like period to pay any taxes or assessments which may be assessed against or payable by it under the terms of this indenture, or shall refuse or fail to pay any final judgment recovered against it, from which an appeal shall not have been taken, within five days after execution shall have issued upon said judgment, or shall, after demand, make default, or refuse, neglect or omit, for any period exceeding six months to pay the principal sum of each and all of said bonds hereby secured, or of any of them, when and as the same shall become due and payable, or after having been first requested in writing so to do by said trustee shall neglect, omit or refuse to sufficiently insure all or any of the property of said company as herein contemplated, paying and keeping paid the premium or premiums therefor, then and in any such case the said trustee may, and upon the written request of holders of bonds secured hereby and then outstanding to the nominal sum of ten thousand dollars (\$10,000) shall enter upon and take possession of all of the property, both real, personal and mixed, hereby mortgaged, or agreed to be mortgaged, and operate, use, manage and control the said property of which possession may be so taken, to the best advantage, and collect all tolls, revenues, rents, issues and profits arising therefrom and to appropriate the net income

in and proceeds so derived (after deducting the expenses of the execution of this trust, and also such sums as may be sufficient to indemnify said trustee against any liability, loss, outlay or damage, for or on account of any matter or things done by him, his successor or successors, in good faith and in pursuance of his or their duty as trustee hereunder) to the payment in full, without giving preference, priority or distinction of one bond over another, of the bonds then issued and outstanding secured by these presents, applying such funds, first, in payment of the interest, if any, due and unpaid, and secondly, in payment of all sums of principal of said bonds then outstanding, in full, if such net income be sufficient, but if not, then pro rata; and the said trustee in the same event may, and upon the written request of the holders of said bonds to the amount above specified shall, after, or without, entering upon or taking possession of said property, sell all of the property herein mortgaged as the same may then appear, either at public sale, in chancery, or in any other manner in conformity with the laws of the jurisdiction in which such property is, or may be, found, and it is hereby agreed that such sale may be adjourned from time to time in the discretion of said trustee, and that, after such adjournment, said sale may be made at the time and place to which the same may have been adjourned, and that said trustee shall have full power and lawful authority to duly grant, transfer and convey all of the property herein described by all necessary and properly executed instruments to the purchaser or purchasers at such sale, free from the lien created by this mortgage, without liability on the part of the purchaser or purchasers to see to the application of the purchase money, or to inquire into the necessity, expediency or authority of or for said sale, which sale so made as aforesaid shall be a perpetual bar, both in law and in equity, against the said company and against all persons claiming, or to claim the premises, property, rights and franchises, or any part thereof, or any interest therein, by, from, under or through said company, and shall appropriate the purchase money after deducting the expenses of said trust, together with a sum sufficient to indemnify the said trustee, as aforesaid, first to the payment of said interest, and second to the payment of said principal, as aforesaid, and in the event of there being in the hands of said trustee any portion of the trust estate, or the proceeds thereof, remaining after payment in full of said principal and interest of the aforesaid bonds, and after deducting the expenses of said

trust, and a sum sufficient to indemnify said trustee, as aforesaid, then the said trustee shall, in that event, reconvey, retransfer and pay over unto the said company, its successors or assigns, all of such surplus, for its and their sole use and benefit.

THIRD.—In the event of any entry upon or taking possession of, or sale of, the property herein mortgaged, or to be hereby mortgaged, under any power herein conferred, or should said trustee apply to any proper court to foreclose this mortgage upon default by said company, as herein provided, then, and in any such case, the whole principal sum of, and all of the bonds then outstanding and secured, or intended to be secured hereby, shall forthwith, ipso facto, become immediately due and payable.

FOURTH.—It is hereby further agreed and provided that the rights of entry and sale hereinbefore granted are intended as cumulative remedies and shall not be deemed to deprive said trustee, or the beneficiaries under this trust, acting through said trustee, of any legal or equitable remedy by judicial proceedings appropriate to enforce all or any of the provisions of this instrument; but no bond holder or bond holders shall take any proceedings to enforce the provisions thereof until after they shall have requested the said trustee, his successor or successors, in writing, to take proceedings to foreclose this mortgage, and shall have furnished proper and satisfactory indemnity to the said trustee for such proceeding or proceedings; and the said company hereby agrees that in case of any default upon its part as aforesaid, it will not set up, claim, or seek to take advantage of, any stay of execution, valuation, appraisement or extension laws which may or might prevent, postpone, hinder or delay the exercise of the right of said trustee, or of the holders of the bonds secured hereby, or any of them, to enter upon, operate or sell the hereby mortgaged properties, or the enforcement or foreclosure of this mortgage, or the absolute sale of its mortgaged property or rights hereunder, without and free from appraisement, valuation, stay or other condition, but said company does hereby expressly waive any and all benefit of any such valuation, stay, extension or appraisement law to such effect as aforesaid.

FIFTH.—The said company, its successors or assigns, by and with the consent of said trustee, his successor or successors, may at any time or times hereafter, exchange for other property

or sell all, or any part of, the property hereby mortgaged which, in the opinion of said trustee may not be necessary for the prosecution of said company's corporate purposes, and convey the same without any liability on the part of the grantee thereof for the disposition made of the purchase money, or of the property, received in exchange by said company; and said trustee, upon the request of said company, its successors or assigns shall, in case he consents to such sale or exchange, execute all necessary releases for that purpose; the said company hereby covenanting that the proceeds of any sale so made shall be invested by it either in the improvement of such remaining part of the mortgaged premises, or in the purchase of other property, real or personal, which improvements and property so acquired shall be subject to all of the terms (including that of sale or exchange) hereby created, and shall be conveyed and mortgaged hereby by said company to said trustee to be held or used in payment of the bonds hereby secured.

SIXTH.—Until default shall be made in payment of the principal or interest of said bonds secured hereby, or of some of them, or until default shall be made in respect to some or any other matter herein required to be done or observed by said company, in pursuance of the covenants on its part herein or in said bonds contained, the said company shall be permitted and allowed to hold, possess and enjoy the premises hereby conveyed, and to take and use the rents, profits, issues, income and revenue thereof, and to dispose of the same in any manner not inconsistent with the provisions of this indenture, and until such default said company shall have, use and exercise all rights of ownership over all of said property, subject always to the covenants and agreements expressed herein.

SEVENTH.—In case said trustee, his successor or successors in the trust hereby created shall neglect, refuse or become incapable, to act in the execution of the trust hereby created, or shall resign the same, then the holder or holders of any bonds issued under the securities of these presents to the nominal amount of ten thousand dollars (\$10,000) par value, may apply to any court of competent jurisdiction to nominate and appoint some fit or proper person or persons, or corporation, to be selected by the judge or judges of such court, to be the new trustee or trustees for the purpose of filling the vacancy so caused. In case of appointment by such court of a trustee or

trustees to succeed said trustee herein named, or to succeed any successor of said trustee or any trustee appointed hereunder, such successor trustee or trustee, when appointed, shall take upon himself, themselves, or itself the same trusts, and shall have the same powers, and be subject to all of the stipulations and conditions of this indenture in the same way as if originally named as such trustee herein, and the same trusts, powers, stipulations and conditions shall extend to and be performed and executed by, and with reference to, such newly appointed trustee or trustees as they can, may, could or might be by or with reference to the original trustee hereby appointed, and a like nomination and appointment shall and may be made and carried into effect in like manner, from time to time and as often as there may be occasion therefor, with the same effect as above stated. Said trustee herein named shall not be obliged to give any security for the execution of the trusts herein created.

EIGHTH.—It is expressly provided and agreed that said trustee shall offer for sale, and shall, without delay, and by such means as shall to him seem proper and expedient, attempt to sell each and all of the said bonds hereby secured, the said sale or sales to be made at such price as shall be, from time to time fixed by resolution of the board of directors of said company and duly certified to said trustee by the president and secretary thereof; and it is further agreed that the proceeds of such sales shall be held by said trustee for use in (here insert purpose to which funds are to be devoted) and that such funds shall be paid out by said trustee only upon approved vouchers in such form as said trustee may require, indicating, to his satisfaction, that all of said funds so paid out by him are devoted to the use for which the same are intended, as herein expressed.

NINTH.—Commencing on the day of 19... at which time the first payment shall be made, payments shall be made into a sinking fund which shall be deposited with some suitable national bank or trust company, as may be agreed upon between said trustee and said company, and payments of said fund shall be on and after the date last above mentioned in the following amounts. (Here insert amounts from time to time payable into such fund.)

The purpose of said sinking fund shall be the retirement of said bonds at or before their maturity. All funds accumulated in the sinking fund may be used at the discretion of the board

of directors of said company in retiring said bonds at one hundred five dollars (\$105) for each one hundred (\$100) dollars face value thereof, plus all accrued interest remaining unpaid, at any time after five years from the date hereof, beginning with the bond bearing serial number "1" and making payment of said bonds in regular order according to the serial number thereof.

Failure in any year to make the deposit above specified in said sinking fund, or neglect or refusal to make such deposit, shall be regarded and may be treated in every respect as a failure to pay matured principal and interest accruing upon said bonds, and upon such failure, neglect or refusal so to make such deposit in said sinking fund, said trustee may, at his own election, or may be required by the holder or holders of bonds outstanding to the face value of ten thousand dollars (\$10,000) to take possession of the property herein mortgaged, or to foreclose the lien hereby created, in the same manner as hereinbefore provided in case of default.

TENTH.—Said trustee shall not, nor shall any future trustee or trustees hereunder (unless requested by the holder or holders of bonds hereunder to the extent and value above stipulated in any one of the events which shall entitle such request to be granted) incur any liability or responsibility whatever in consequence of permitting or suffering the said company to be in possession of the mortgaged property hereinbefore mentioned, or any part thereof, and to use and enjoy the same; nor shall said trustee, nor any successor trustee or trustees, be or become liable for any destruction, deterioration, loss, injury or damage which may be done, or which may occur, to said company or to the assets hereby mortgaged, or agreed or intended so to be mortgaged, either by said company, or its agents or servants, or by any person or persons whatsoever, without the consent of such trustee, nor shall any trustee or trustees, present or future, be in any wise responsible for the consequences of any breach of any covenant or agreement herein contained on the part of said company, or for any act of said company, its agents or servants, nor for any causes, matters or things whatsoever, except the wilful and intentional breach by such trustee or trustees of the terms of the trust hereby created and expressed.

ELEVENTH.—And the said company further covenants and agrees that it will, from time to time, when and as requested by

said trustee make any further deeds, conveyance or transfer unto said trustee, his successor or successors that may be required by said trustee under the advice of counsel.

TWELFTH.—If said company, its successors or assigns, shall well and truly pay or cause to be paid to the person or persons, bodies politic or corporate, who shall become holders of the bonds secured or intended to be secured hereby, the several and respective sums expressed herein and in said bonds, at the times and places hereinbefore mentioned for the payment thereof, together with interest upon the same according to the provisions hereof, and of all of said bonds, without any default or further delay, then and in that event and from thence forth, this mortgage deed of trust and each and every of the bonds secured hereby, or hereby agreed or intended so to be shall become void and of no further effect, anything herein or in said bonds contained to the contrary thereof notwithstanding, and the said trustee, his successor or successors shall forthwith and in due form discharge this mortgage deed of trust in accordance with law.

IN WITNESS WHEREOF the said Company has caused its corporate seal to be hereunto affixed, and the president and secretary of said company by virtue of the authority in them vested, have executed this indenture in the name and behalf of said company, and as the act and deed of said company, on the day and year first above written.

.....COMPANY.
By.....President.
.....Secretary.
CORPORATE SEAL.)

Signed, sealed and delivered in presence of

.....
.....

I,, the trustee named in the within mortgage deed of trust, do hereby accept the foregoing trust according to the terms thereof.

.....
Trustee.

Executed by said trustee in presence of

.....
.....
.....

(Annex usual jurat for acknowledgement by president and secretary of said company, and a separate jurat for acknowledgement by said trustee.)
(Attach same form of jurat as in Sec. 473.)

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